(16,576.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 105.

RODMAN M. PRICE, MADELINE PRICE, GOVERNEUR PRICE, FRANCIS PRICE, AND E. TRENCHARD PRICE, PLAINTIFFS IN ERROR,

vs.

ANNA M. FORREST AND CHARLES BORCHERLING.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

INDEX.

	Original.	Print.
Writ of error	*a*	1
Return on writ of error	*c*	2
Petition for writ of error	*e*	2
Citation	*o*	7
Acceptance of service of citation	*p*	7
Assignment of errors	*q*	7
Transcript from chancery court	*x*	10
Bill of complaint	1	11
Affidavit of Cortlandt Parker	20	23
Affidavit of Frank W. Hackett	21	23
Order for injunction	22	24
Plea of Madeline Price and Governeur Price	22*a*	25
Opinion of Attorney General Cushing	22*h*	29
Note as to plea of Francis Price *et al.*	22*t*	37

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 11, 1898.

	Original.	Print.
Order overruling plea	22*u*	37
Appeal from foregoing order	22*v*	38
Petition on appeal	22*w*	38
Decree of court of errors and appeals	22*y*	39
Decree upon remittitur	22¼	40
Answer	23	42
Opinion of Attorney General Cushing (omitted in printing here; see page 22*h*)	33	48
Decree on bill and answer	47	48
Notice of appeal	49	49
Petition of appeal	50	49
Answer to petition of appeal	52	50
Check-list	53	51
Opinion on appeal from order overruling plea	54	52
Opinion on appeal from final decree	86	67
Final decree	88	68
Bond on writ of error	90	68
Clerk's certificate	94	69
Statement of errors and designation by plaintiffs in error of parts of record to be printed	95	70
Acceptance of service of statement of errors, &c	101	72

a UNITED STATES OF AMERICA, *ss*:

[The Seal of the U. S. Circuit Court, Dist. of New Jersey.]

The President of the United States to the honorable the judges of "the court of errors and appeals in the last resort in all causes" in the State of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of errors and appeals in the last resort in all causes, before you, being the highest court of the said State in which a decision could be had, in the said suit between Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, appellants and plaintiffs in error, and Anna M. Forrest and Charles Borcherling, the defendants in error, wherein was drawn in question the validity of a statute of and of an authority exercised under the United States and the decision was against their validity, and wherein was drawn in question a title, right, privilege, and immunity claimed by the plaintiffs in error under a statute of the United States and the decision was against the title, right, privilege, and immunity specially set up and claimed by the plaintiffs in error under such statute, a manifest error hath happened, to the great damage of the said Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, the said appellants and plaintiffs in error, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judg-
b ment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the sixth day of May next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the seventh day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

S. D. OLIPHANT,
Clerk of the Circuit Court of the United States for the District of New Jersey, Third Circuit.

Allowed by—

ALEX. T. McGILL,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in All Causes in New Jersey.

c *The Answer of the Judges of the Court of Errors and Appeals in the Last Resort in All Causes in the State of New Jersey within Named.*

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Supreme Court of the United States in a certain schedule to this writ annexed, as within commanded.

ALEX. T. McGILL,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in All Causes in New Jersey.

d [Endorsed:] Supreme Court of the United States. Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, *vs.* Anna M. Forrest and Charles Borcherling, defendants in error. Writ of error to the court of errors and appeals of the State of New Jersey. Returnable the sixth of May, 1897.

e The Court of Errors and Appeals in the Last Resort in All Causes in New Jersey.

ANNA M. FORREST and CHARLES BORCHERLING, Complainants and Respondents,
and
RODMAN M. PRICE, MADELINE PRICE, GOVERNEUR PRICE, FRANCIS PRICE, and E. Trenchard Price, Defendants and Appellants.

To the honorable the Supreme Court of the United States:

Your petitioners, the defendants, Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, respectfully show:

That upon the fifth day of July, eighteen hundred and ninety-four, the bill of complaint herein was filed in the court of chancery of New Jersey, alleging that one Samuel Forrest, then deceased, had recovered a judgment in the supreme court of New Jersey against Rodman M. Price, also deceased, in his lifetime, for the sum of seventeen thousand dollars of debt and seventy-eight dollars and four cents of costs, on the second day of June, eighteen hundred
f and fifty-seven; that the execution had never been made of said judgment; that the complainant Anna M. Forrest, as widow and administratrix of said Samuel Forrest, deceased, had filed her bill of complaint in the court of chancery of New Jersey against said Rodman M. Price, now deceased, to enforce said judgment against property believed to belong to said Rodman M. Price; that pending said suit the complainant therein had discovered that certain moneys were about to be paid to the said Rodman M. Price by the officers of the Department of the Treasury of the United States, being a sum found to be due him from the Government of the United States by an accounting lately had between him and it; that

she thereupon and on or about the ninth day of August, eighteen hundred and ninety-two, and after answer in the cause by said Rodman M. Price, filed a petition therein and prayed an injunction out of the said court restraining said Price from collecting said moneys and praying the appointment of a receiver and a decree that said Price endorse and turn over to said receiver the drafts or other means of procuring said money; that such an order was made by the court of chancery and served upon said Price, and that nevertheless thereafter he collected certain sums of said money from the United States; that the said Charles Borcherling was appointed, by the court of chancery in said cause, receiver, in accordance with the prayer of said petition; that an attachment for contempt was issued by said court against said Price for his failure to obey the order of said court, but before it was executed, and about the eighth day of June, eighteen hundred and ninety-four, he died; that no will of his had been presented for probate nor letters of administration issued on his estate; that there still
g remained in the Treasury of the United States, of moneys payable by the United States to the said Rodman M. Price, the sum of about twenty-three thousand dollars, and that these petitioners, the children of the said Rodman M. Price, were endeavoring to collect the same from the United States Treasury, and the bill prayed, amongst other things, a revival of the said original suit, an injunction against these petitioners, the defendants to said bill, and their attorneys from making any demand upon or application to the Government of the United States or the Secretary of the Treasury of the United States or any officer of said Treasury or from receiving from the United States or said Secretary of the Treasury or any officer thereof any part of the money still remaining in the Treasury of the United States and which was awarded to said Rodman M. Price as aforesaid, and that these petitioners be decreed to pay to said receiver, to be by him disposed of under the orders of the court of chancery, and that these petitioners make discovery of all property of said Rodman M. Price.

To this bill of complaint these petitioners, Madeline Price and Governeur Price, on the twenty-second day of September, eighteen hundred and ninety-four, and these petitioners, Francis Price, Rodman M. Price, and E. Trenchard Price, on the twenty-seventh day of November, eighteen hundred and ninety-four, filed pleas to the said bill of complaint, which pleas were, by decree of the said court of chancery made on the twenty-ninth day of July, eighteen hundred and ninety-five, overruled and these petitioners ordered to answer the bill of complaint; and thereupon these petitioners ap-
pealed from said decree of the chancellor to the court of errors
h and appeals in the last resort in all causes in New Jersey, which court afterwards and by its decree dated on the second day of March, eighteen hundred and ninety-six, affirmed the said decree of the court of chancery and remitted the record thereof to the said court of chancery, with directions to proceed therein according to law; and thereupon, by its decree bearing date the second day of March, eighteen hundred and ninety-six, the said

court of chancery, by its decree bearing date on the sixteenth day of June, eighteen hundred and ninety-six, the said decree of the court of errors and appeals was made the decree of the said court of chancery; and thereupon and afterwards, on the twenty-fourth day of June, eighteen hundred and ninety-six, these petitioners filed their answer in said court of chancery to the said bill of complaint, in which, after admitting the filing of the original bill of complaint, that moneys were drawn from the Treasury to the amount named in the bill; that said Rodman M. Price, deceased, did not comply with the order of the court of chancery; that no will of his had been presented for probate, so far as they knew, nor letters of administration issued upon his estate. They alleged ignorance as to whether he had received the moneys named and alleged that he left no estate, and that no property, real or personal, had come to them from him, and admitted their effort to collect the moneys in question from the Treasury of the United States, and asserted their right to do so, and set forth that they are entitled to receive from the United States the moneys therein remaining which are part and parcel of the moneys awarded by the act of Congress set forth in the bill of complaint as original takers as the heirs of the said Rodman M. Price, deceased, which act of Congress, referred to in the bill of complaint and set out in said answer, was an act of Congress approved February twenty-third, eighteen hundred and ninety-one, and was entitled "An act for the relief of Rodman M. Price" and was in the words and figures following, to wit:

"An act for the relief of Rodman M. Price.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby authorized and directed to adjust upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting navy agent at San Francisco, California, crediting him with the sum paid over and receipted for by his successor, A. M. Van Nostrand, acting purser, January fourth, eighteen hundred and fifty, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury, not otherwise appropriated, any sum that may be found due upon such adjustment.

"Approved, February 23, 1891."

And the answer further alleged that as to all the moneys not actually received by the said Rodman M. Price, deceased, from the Government of the United States upon such adjustment under said act actually remaining unpaid to said Rodman M. Price at his death these petitioners, defendants, heirs of said Rodman M. Price, deceased, therein referred to, were entitled to thereunder by special designation in said act as his heirs, and that the said moneys so remaining unpaid were in nowise chargeable with the debts and liabilities of the said Rodman M. Price, deceased, or to any of his

creditors, and that all such moneys so unpaid to him in his
j lifetime were payable by the Government of the United States directly and exclusively to these petitioners out of any moneys in the Treasury and not otherwise appropriated and for the benefit of these petitioners respectively without any claim whatsoever upon the same by the complainant; and after reciting the facts which gave rise to the passage of said act of Congress and the circumstances attending it and the opinion of the Attorney General thereon and the adjustment between the Secretary of the Treasury and the said Rodman M. Price of the amount due him thereunder and a statement that the said Rodman M. Price, deceased, in his lifetime actually received four drafts from the Government of the United States and the money therefor, amounting to forty-five thousand two hundred and four dollars and eight cents ($45,204.08), and that the balance thereof, which is part of said seventy-five thousand dollars ($75,000) after deducting any other sum actually paid thereon to said Rodman M. Price in his lifetime by the Government of the United States, said answer alleged that these petitioners, defendants, being the heirs of the deceased, were entitled to as aforesaid under and by virtue of the said act of Congress and adjustment aforesaid and prayed to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

That afterwards and on or about the twenty-fifth day of June, eighteen hundred and ninety-six, said cause was duly argued before the court of chancery at Jersey City, in said State of New Jersey, on bill and answer, and on or about the twenty-fifth day of June, eighteen hundred and ninety-six, a decree was made therein decreeing that the said defendants and each of them be, and they thereby
were, perpetually enjoined and restrained from making any
k demand upon or application to the Government of the United States or the Secretary of the Treasury of the United States or any officer of said Treasury or from receiving from the United States or its said Secretary of the Treasury or any officer thereof any part of the money remaining in the Treasury of the United States at the time of the filing of the said bill of complaint and which was awarded to Rodman M. Price, deceased, as in said bill stated, or now there remaining, and that said defendants likewise pay to the complainants or their solicitors their costs to be taxed in the cause.

And thereupon these petitioners appealed from said last-named decree of the chancellor to the court of errors and appeals in the last resort in all causes in New Jersey by their notice of appeal bearing date the second day of November, eighteen hundred and ninety-six, and filed in the court of chancery, and by their petition in the court of errors and appeals in the last resort in all causes in New Jersey on the eighteenth day of November, eighteen hundred and ninety-six, in accordance with the practice in the said court, and said case was submitted by the parties thereto to the said court of errors and appeals in the last resort in all causes in New Jersey on the second day of December, eighteen hundred and ninety-six; and thereupon afterwards the said court of errors and appeals in

the last resort in all causes in New Jersey by its decree bearing date the eleventh day of January, eighteen hundred and ninety-seven, ordered, adjudged, and decreed that the said decree of the chancellor, from which appeal to said court was taken, be, and
l the same was thereby, in all things affirmed, with costs, to be taxed, and that the record be remitted to the court of chancery to proceed therein and therewith according to law.

And the petitioners aver that the said the court of errors and appeals in the last resort in all causes in New Jersey is the highest court in which a decision in said suit could be had, and that said last-named decree was a final decree in the said suit, and that there was drawn in question the validity of the said statute of the United States, namely, the act entitled "An act for the relief of Rodman M. Price," approved February 23rd, 1891, above cited, and also the validity of an act of Congress of the United States, namely, section 3477 of the Revised Statutes of the United States, and the decision is against their validity, and wherein was drawn in question a title, right, privilege, and immunity claimed by these petitioners under said statutes of the United States, in that thereunder they claim that they and they only were entitled to receive the said moneys so remaining in the Treasury of the United States, and that the said complainants were not entitled to receive the same, and that any assignment thereof decreed by said court in said proceeding was null and void under said acts, and any decree interfering with the right of these appellants to collect the said moneys under said acts was contrary to said statutes and null and void, and the decision was against the said title, right, privilege, and immunity so set up and claimed by these appellants under said statutes.

Wherefore these petitioners, conceiving themselves aggrieved by said final decree, respectfully pray that the same may be re-
m examined and reversed by this court, and that to that end a writ of error may issue, to be directed to the said the court of errors and appeals in the last resort in all causes in New Jersey, to bring up to this court the said decree, record, and proceedings aforesaid, with all things touching and concerning the same, that, the same being inspected, this court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Dated April sixth, 1897.

FLAVEL McGEE,
Solicitor for and of Counsel with Petitioners.

April seventh, A. D. eighteen hundred and ninety-seven, petition allowed.

ALEX. T. McGILL,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in All Causes in the State of New Jersey.

n [Endorsed:] 4-77. The court of errors and appeals in the last resort in all causes in New Jersey. Anna M. Forrest

and Charles Borcherling, compl'ts & resp'nd'nts, and Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, def'ts & app'lnts. Petition for writ of error. Flavel McGee, def'ts' sol'r. Filed April 10, 1897. George Wurts, clerk.

o UNITED STATES OF AMERICA, *ss:*

To Anna M. Forrest and Charles Borcherling, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the sixth day of May next, pursuant to a writ of error filed in the clerk's office of the court of errors and appeals in the last resort in all causes in the State of New Jersey, wherein Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price are plaintiffs in error and you, Anna M. Forrest and Charles Borcherling, are defendants in error, to show cause, if any there be, why the decree in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alexander T. McGill, chancellor, presiding judge of the court of errors and appeals in the last resort in all causes in the State of New Jersey, this seventh day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal of the Secretary of the State of New Jersey.]

ALEX. T. McGILL,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in All Causes in the State of New Jersey.

p [Endorsed:] 4-77. Original. Supreme Court of the United States. Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, *vs.* Anna M. Forrest and Charles Borcherling, defendants in error. Citation to defendants in error. Filed April 13, 1897. George Wurts, clerk. Flavel McGee, sol. for and of counsel with plaintiffs in error. Without waiver of any legal exception to the issue thereof. Service on the defendants in error of this citation and of a copy of the writ of error in the case acknowledged this 13th day of April, 1897. Cortlandt & Wayne Parker, attorneys of defendants in error.

q Supreme Court of the United States.

RODMAN M. PRICE, MADELINE PRICE, GOVERNEUR Price, Francis Price, and E. Trenchard Price, Plaintiffs in Error,
vs.
ANNA M. FORREST and CHARLES BORCHERLING, Defendants in Error.
} Assignment of Errors.

Afterwards, that is to say, on the sixth day of May, eighteen hundred and ninety-seven, in the Supreme Court of the United States,

comes the said Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, by Flavel McGee, their solicitor, and say that in the record and proceedings aforesaid and in the decree aforesaid given in the court of errors and appeals in the last resort in all causes in New Jersey there is manifest error in this, to wit:

That said court of errors and appeals in the last resort in all causes in New Jersey decreed that the decree of the chancellor from which appeal to said court was taken be, and the same was thereby, in all things affirmed, with costs, to be taxed, whereas by law said court should have decreed that said decree of the chancellor be reversed with costs, to be taxed.

There is also manifest error in this, to wit, that said court of errors and appeals decreed that said decree of the chancellor which
r decreed that said defendant-, these plaintiffs in error, and each of them be, and they thereby were, perpetually enjoined and restrained from making any demand upon or application to the Government of the United States or the Secretary of the Treasury of the United States or any officer of the said Treasury or from receiving from the United States or its said Secretary of the Treasury or any officer thereof any part of the money remaining in the Treasury of the United States at the time of filing the said bill of complaint, and which was awarded to said Rodman M. Price, as in said bill stated or there remaining—

Whereas by law said court should have decreed that said decree be reversed, said final injunction dissolved, and said bill of complaint dismissed.

There is also manifest error in this, to wit, that the said court of errors and appeals decreed that said decree of the chancellor, which decreed that these plaintiffs in error pay to the complainants or their solicitors their costs, to be taxed—

Whereas by law said court should have decreed that said decree be reversed, and that said complainants pay to these plaintiffs in error their costs of said suit.

There is also manifest error in this, to wit, that said court of errors and appeals by said decree decided that under the act of Congress entitled "An act for the relief of Rodman M. Price," approved
s February 23, 1891, and which is set out in full in the answer filed by these plaintiffs in error in the court of chancery of New Jersey, *pro ut* the case, the money therein mentioned was intended to benefit the estate of Rodman M. Price and to be within the reach of his creditors, and that there heirs of said Rodman M. Price, deceased, were not thereby personally intended to be the beneficiaries of the United States by way of gift or gratuity to them as such—

Whereas by law said court should have decided that under said act the money therein mentioned was intended to be for the benefit of said Rodman M. Price, now deceased, if and in so far as the same was paid to him during his life and for the benefit of his heirs as original takers in so far as the same was not paid to him during his life.

There is also manifest error in this, to wit, that said court of errors and appeals by said decreed decided that the heirs of said Rodman M. Price, deceased, were subject to the jurisdiction of said court in the premises, and that that court can treat them as if they were in the possession of said money in order to compel them to assign it to the receiver appointed in said suit or to give effect to such assignment to him by operation of law—

Whereas by law said court should have decided that these plaintiffs in error, as such heirs of Rodman M. Price, were original beneficiaries under said act and were not subject to the jurisdiction of the court for the enforcement of the judgment against the
t said Rodman M. Price, deceased, and could not be compelled by said court to assign it to a receiver appointed in said suit or to give an effect to such an assignment.

There is also manifest error in this, to wit, that said court of errors and appeals by said decree decided that an assignment of the claim of these plaintiffs in error to said moneys made by the order or decree of said court against the will of these plaintiffs in error and without the formalities required by section 3477 of the Revised Statutes of the United States is valid—

Whereas by law said court ought to have decided that an assignment so made without said formalities is void.

There is also manifest error in this, to wit, that said court of errors and appeals by said decree decided that the receiver appointed in said suit in equity took title to said moneys from said Rodman M. Price, deceased, or the defendants, these plaintiffs in error, by operation of law, and that the title thereto of said Rodman M. Price, deceased, o the defendants, these plaintiffs in error, was vested in him by operation of law—

Whereas by law said court ought to have decided that no title could be legally vested in him by decree of said court, but that any assignment or transfer so made would, under section 3477 of the Revised Statutes of the United States, be void.

u There is also manifest error in this, to wit, that said court of errors and appeals by said decree decided that a transfer of said moneys made to said receiver against the will of the plaintiffs in error and without the formalities required by section 3477 of the Revised Statutes of the United States was a transfer made by operation of law and valid—

Whereas by law said court ought to have decided that a transfer so made would not be by operation of law and was void.

There is also manifest error in this, to wit, that these plaintiffs in error in and by their said answer in said cause claimed, under said act therein recited, entitled "An act for the relief of Rodman M. Price," that they were entitled to the balance of the said moneys in the Treasury of the United States therein mentioned as original takers under said act, and said court of errors and appeals by said decree decided that they were not such original takers under said act—

Whereas by law said court ought to have decided that they were.

There is also manifest error in this, to wit, that these plaintiffs in error in said cause specially set up and claimed, under said act entitled "An act for the relief of Rodman M. Price," in their said answer recited, a right under said statute to receive the
v moneys therein mentioned from the United States, and the said decision of the said court of errors and appeals was against said right so specially set up and claimed by these plaintiffs in error.

And there is also manifest error in this, to wit, that in said suit these plaintiffs in error, under section 3477 of the Revised Statutes of the United States, specially set up and claimed that no transfer or assignment of their said claim for said moneys upon the United States or any part thereof could be validly ordered by said court against their will nor without the formalities mentioned in said section 3477 of the Revised Statutes of the United States, and the said court of errors and appeals by its said decree decided against said right so specially set up and claimed by these plaintiffs in error.

Wherefore the said plaintiffs in error pray that the decree aforesaid, by reason of the errors aforesaid and for other errors appearing in the record and proceedings aforesaid, may be reversed, annulled, and for nothing holden, and that the said the plaintiffs in error may be restored to all things they have lost on occasion of said decree.

FLAVEL McGEE,
Attorney for & of Counsel with the Plaintiffs in Error.

Approved:
ALEX. T. McGILL,
Chancellor, Presiding Judge of the Court of Errors & Appeals in the Last Resort in All Causes in New Jersey.

w [Endorsed:] 4-77. Supreme Court of the United States, October term, 1896. Rodman M. Price and others, plaintiffs in error, *vs.* Anna M. Forrest *et al.*, defendants in error. Assignment of errors. Flavel McGee, attorney for & of counsel with the plaintiffs in error. Filed April 10, 1897. George Wurts, clerk.

x New Jersey Court of Errors and Appeals.

Between—

RODMAN M. PRICE ET ALS., Appellants,
and
ANNA M. FORREST, Administratrix of Samuel Forrest, Deceased, *et al.*, Respondents.

On appeal.

State of the Case.

Messrs. McGee, Bedle & Bedle, solicitors of appellants.
Messrs. Cortlandt & Wayne Parker, solicitors of respondents.

1 In Chancery of New Jersey.

Between—

ANNA M. FORREST, Adm'x of Samuel Forrest, Deceased, Compl't,
and
RODMAN M. PRICE, Def't.

Bill for Revivor and Relief & Order for Inj.

Cortlandt & Wayne Parker, sol'rs for compl't.

Filed July 5, 1894.

To the Honorable Alexander T. McGill, chancellor of the State of New Jersey:

Humbly complaining showeth unto your honor your oratrix, Anna M. Forrest, widow and administratrix of Samuel Forrest, deceased, of Charlestown, Virginia, and Charles Borcherling, of the city of Newark, county of Essex and State of New Jersey, the said Anna M. Forrest, administratrix, as aforesaid, filing this bill of complaint by permission of the court as a bill of revivor and original bill in the nature of a supplemental bill to the bill of complaint, filed by her as hereafter stated, against Rodman M. Price, of Bergen county, New Jersey, now deceased, jointly with his wife, Matilda C. S. Price and Francis Price, which bill was filed on or about the thirtieth day of May, eighteen hundred and seventy-four, and the said Charles Borcherling appointed receiver in said cause, of the goods and chattels, rights,
2 credits, property and effects, of the said Rodman M. Price, joining with her the said administratrix, in the prayer hereof.

And thereupon your oratrix administratrix, as aforesaid, alleges and shows that on or about the day and year aforesaid, your oratrix filed as aforesaid in this court, her bill of complaint in which she alleged that about the second day of June, eighteen hundred and fifty-seven, in the supreme court of New Jersey, said Samuel Forrest, in his lifetime, did recover against said Rodman M. Price a debt of seventeen thousand dollars, and also seventy-eight dollars and four cents costs; that about the seventh day of November in said year, said Samuel Forrest sued out a writ of *fieri facias* upon said judgment, but the same was returned unpaid and unsatisfied; that said Samuel Forrest departed this life about the seventh day of November in the year eighteen hundred and sixty intestate, the said judgment still remaining unpaid and unsatisfied that about the twenty-second day of January, eighteen hundred and seventy-four, administration of the goods and chattels, rights, and credits, which were of the said Samuel Forrest, deceased, in his lifetime, was granted to your oratrix by the then ordinary of this State, in the prerogative court thereof; that your oratrix shortly afterwards sued out of said supreme court against said Rodman M. Price, a writ of *scire facias*, to revive said judgment and commanded him to show cause why execution should not issue thereon; that about the fifteenth day of April, eighteen hundred and seventy-four, judgment was entered upon said writ that your oratrix should have her execution of the

said debt and costs with interest; that on or about the fourteenth day of April, eighteen hundred and seventy-four, your oratrix sued and prosecuted out of said supreme court, a writ of *fieri facias* directed to the sheriff of the county of Bergen, commanding him that of the goods and chattels of said Rodman M. Price, defendant in his bailiwick, he should cause to be made said debt of seventeen thousand dollars and costs, and if sufficient
3 goods and chattels of said Price could not be found by him, then that the sheriff should cause the said sum to be made of the real estate, whereof defendant was seized on the said second day of June, eighteen hundred and fifty-seven, or at any time afterwards, in whose hands soever the same might be, and that he should have those moneys before said supreme court on the first Tuesday of June, then next ensuing, to render for the damages aforesaid; that in said bill of complaint your oratrix set forth certain facts intended to show an interest to be possessed by the said Price in certain lands, and tenement- and other property in the county of Bergen, particularly set forth in said bill of complaint; that there was also contained in said bill allegations intended to show the possession by said Rodman M. Price at the time of filing said bill of a claim for a large sum of money upon a judgment against Erasmus B. Keyes and Edmund M. Scott, also particularly set forth in said bill of complaint, and by said bill she alleged that she was informed and believed that the said Rodman M. Price, besides the aforesaid property had equitable things in action or other property to the amount of many thousand dollars, exclusive of all claim thereon, and all exemptions allowed by law, which your oratrix had been unable to reach by execution on your oratrix' said judgment; that her bill of complaint in said case was not exhibited by collusion with the said Price, nor for the purpose of protecting his property against the claims of other creditors, but for the purpose of compelling payment and satisfaction of her own debt aforesaid, and your oratrix by said bill prayed discovery from the said Rodman M. Price, of all property, real or personal, whether in possession or action, belonging to him, with full particulars as to the same, and that the same might under the order of this court be appropriated to the payment of said judgment and the costs of said bill of complaint, and that some discreet and proper person might be appointed receiver
4 in this cause by this court to collect and take charge of the property, money and things in action that might be found to belong to the said Rodman M. Price or to which he might or could be in any way or manner entitled, either in law or equity, with power to convert the same into money, and with such other powers which are usually granted to receivers in similar cases; and that the said Rodman M. Price might be enjoined and restrained by the order and decree of this court from assigning, transferring, or making any other disposition of the real estate and personal property to which he was in anywise entitled, and from receiving any moneys then due or to become due to him except where the same were held in trust and created by or the funds held in trust had proceeded from other persons than the said Rodman M. Price,

and enjoining him from selling, conveying, or in any manner recovering the said lands or selling the judgment therein described, and the process of subpœna and injunction was prayed by said bill of complaint addressed to the said Rodman M. Price as hereinabove stated, and also to Francis Price therein named, son, and Matilda C. S. Price, wife of the said Rodman, who were made defendants to said suit and alleged to be interested in property therein described and referred to, and alleged equitably to belong to the said Rodman M. Price, and such injunction was, on the filing of said bill granted, and still remains.

And your oratrix further shows unto your honor that on or about the fourth day of December, eighteen hundred and seventy-four, said Rodman M. Price, Matilda C. S. Price, his wife, and Francis Price filed their answer in this court to said bill in which said Rodman admitted the recovery of said judgment by the said Samuel Forrest, but alleged that the judgment was owned as he believed, by Erasmus B. Keyes, the person against whom the judgment in favor of said Price who was mentioned in said bill of complaint, was obtained; that said Keyes had written to him years before said Forrest recovered the judgment against said Price, that he had paid said Forrest the whole of the claim on which said Forrest judgment was founded; that Keyes had a large amount of the assets of this defendant, years before Forrest recovered his judgment; that at the time of said Forrest bringing his suit, the said Price had already sued said Keyes for the money so recovered in the name of said Price in and by the said judgment against Keyes in the State of New York; that by reason of hostile relations between said Keyes and said Price, the latter was unable to establish the payment of the claim of said Forrest and was obliged to let said Forrest suit go by default, and he insisted that the said Keyes by his letters was estopped from alleging that there was nothing due on the said Forrest judgment, and the other defendants allege that they believe his statement to be true.

Said Price further answered that his father Francis Price, purchased the lands mentioned in the bill of complaint, though he acted therein as his father's agent; that the defendant, with his father's consent, occupied said premises, but the purchase was made by the defendant's father for the children of said Price; that he had made improvements upon said property after he became trustee for his children under his father's will, the same being for his children's benefit, and that his use of the property was by the consent of the children out of their affection for him. Said Price denied that any part of the properties mentioned in the bill of complaint were his, or that he had any interest therein, and alleged the money used by him in improving the same not to belong to him, and finally alleged that the complainant had no claim whatever in any of the property standing in the name of any of the said defendants; and your oratrix shows that after the filing of said answer, the said cause slept until on or about the ninth day of August, eighteen hundred and ninety-two, when your oratrix filed therein a petition in which she stated that since the filing of the bill of complaint in the cause, no payment had been made by said Price upon the judgment

therein mentioned, nor had the complainant or her solicitors been able to find any personalty or real estate of the said Price by levy upon and sale of which any part of the amount due upon said judgments could be obtained. And your oratrix showed that the whole of said judgment, with lawful interest remained due, that execution *de bonis et terris* was issued upon the original judgment and returned unsatisfied for want of property whereon to levy; that subsequently an alias writ of *fieri facias de bonis et terris* was also issued upon said judgment of your oratrix and delivered to the sheriff of Bergen county, but was likewise returned unsatisfied, and that on the fourth day of August, eighteen hundred and ninety-two, your oratrix caused another writ of execution *de bonis et terris* to be issued upon the judgment by her recovered, and directed to the sheriff of Bergen, which execution was returned unsatisfied, no goods or lands being found whereon to make the levy. And your oratrix then stated in said petition that it had lately come to the knowledge of her solicitors through information from Washington city, and she charged that the sum of about forty-five thousand dollars was about to be paid to said Price by officers of the Department of the Treasury of the United States, being a sum found to be due him from the Government of the United States by an accounting lately had between him and it; that said sum was to be paid by the delivery to said Price or to his attorneys of a draft of the Treasurer of the United States, or some other negotiable security made or issued by its financial officers and drawn payable to his, the said Price's own order, the rules of the Department of the Treasury, forbidding its being made payable to the order of any other person, or that said sum should be paid in any other way, and that said draft or negotiable security was to be made and the transaction closed upon the fifteenth of the then month of August.

7 And your oratrix further showed that said Price had always exhibited great unwillingness to satisfy any part of said judgment due by him, and that although the same represents a debt for money had and received by him for the use of said Samuel Forrest, deceased, the transaction being that said Price was the attorney-in-fact of said Samuel Forrest for the sale of certain land to him, belonging in the State of California, and that said Price made sale of said land and received the consideration thereof, being a sum exceeding twenty thousand dollars; that nevertheless instead of paying over the said money he retained the sum of about seventeen thousand dollars, and refused and neglected to pay over the same to the said Forrest. Your oratrix stated that she believed that said Price would, if he obtained the said money coming from the United States to him, at once take means to put the same beyond the reach of your oratrix unless restrained by the order of this court, and your oratrix prayed that a writ of injunction might issue out of and under the seal of this court, directed to the said Rodman M. Price restraining and forbidding him to make any endorsement of any such draft or any draft or other negotiable security of the United States, which should come to his hands or to the hands of any other person or any money derived therefrom or thereby to any other person whatever,

except your oratrix or her attorneys, until further order of the court. And further she prayed that a receiver might be appointed of the said draft or other negotiable security aforesaid, and that said Price might be ordered and directed immediately on the receipt of said draft or negotiable security, to endorse the same to said receiver to the end that the amount thereof might be received by him as an officer of this court, and disposed of according to law and such directions as should therein be made.

And your oratrix shows that on presentation of said petition and of affidavits sustaining the same, your oratrix obtained from your honor in this honorable court, a rule, to wit, on the eighth day of August, one thousand eight hundred and ninety-two, return-
8 able on the twelfth day of September following, at the chancery chambers in Jersey City, that the said Rodman M. Price should show cause upon the said last-mentioned day, why the prayer of said petition should not be granted, and why an injunction should not issue and a receiver be appointed pursuant to the said prayer, and said rule further directed that said Price should be, and was thereby restrained and enjoined from making any endorsement of any such draft of the United States as was mentioned in said petition.

And your oratrix shows that a copy of said order, according to directions given therein, was duly served upon the said Price upon the tenth day of August, eighteen hundred and ninety-two, said copy being duly certified by the clerk in chancery under the seal of this honorable court, that nevertheless after such service, and on or about the fifth day of September in said year, the said Price received from the assistant treasurer of the United States at Washington city, four several drafts signed by such assistant treasurer, and dated the fifth day of September aforesaid, addressed to the assistant treasurer of the United States in New York, and payable to his order as late purser U. S. N., such drafts being for the following sums respectively: one for twenty-seven hundred and four dollars and eight cents, another for thirteen thousand five hundred dollars, a third for twenty thousand dollars, and a fourth for nine thousand dollars; that on or about the seventeenth day of September aforesaid, said Price endorsed and received the money for said draft for thirteen thousand five hundred dollars, without permission of this court; that on or about the third day of October, eighteen hundred and ninety-two, said Price endorsed and received the money for said drafts for twenty thousand dollars and nine thousand dollars respectively; also without any permission of this court, and on or about said fifth day of September, said Price endorsed said draft for twenty-seven hundred and four dollars and eight cents, and received the money therefore without previous permission of this
9 court, and your oratrix shows that he received all said moneys and applied them to his own use and benefit.

And your oratrix further shows that on the same third day of October, eighteen hundred and ninety-two, on which he received the money for and endorsed said drafts for twenty thousand dollars and nine thousand dollars respectively, he, the said Price, filed an answer to said petition in which he stated that the said judgment

of said Forrest and of your oratrix against him was paid. And he further stated in said answer that there was a sum of money due to him from the United States, voted to him or his heirs by Congress, and that about forty-five thousand dollars was to be paid, but that said claim was not amenable to the payment of complainants' claim even if valid, nor could it be lawfully paid to any receiver.

And your oratrix shows that it appears by the record of said judgment produced in said cause that the same, instead of being by default, was a judgment upon confession pleas in defense of said Price being by him first withdrawn, and that on the same day of his swearing to and filing said answer, said Price endorsed and received the money for the two drafts for twenty thousand dollars, and nine thousand dollars respectively, the rest of said forty-five thousand dollars having been previously paid to him.

And your orator further showeth that on the tenth day of October, eighteen hundred and ninety-two, it was ordered by this court according to the prayer of said bill that your orator said Borcherling should be and he was thereby appointed receiver of the property and things in action belonging or due to or held in trust for said Price at the time of issuing said executions heretofore mentioned, or at any time afterwards, and especially of said four drafts with authority to possess, receive, and it may be in his own name as such receiver sue for such property or things in action, and it was made thereby the duty of said receiver to hold said drafts subject to the further order of the chancellor herein, and said receiver was required to give bond conditioned for the faithful performance of his trust for forty thousand dollars, with sufficient sureties to be approved as to form and sureties by one of the masters of this court, and the said defendant Price was thereby ordered to convey and deliver to said receiver all such property and things in action, and the evidence thereof, and especially forthwith to endorse and deliver said drafts respectively, and each of them to said receiver and the said Price, and all agents or attorneys by him theretofore or thereafter to be appointed were thereby enjoined and restrained from intermeddling with said receiver in regard *of* said drafts, and ordered and directed if in possession or control thereof, to make delivery to him of the same, and to do all things necessary which should be within their power to put said receiver in possession and control thereof, provided nevertheless that if said drafts, excepting said draft for thirteen thousand five hundred dollars, should be delivered with the endorsement of said defendant to the clerk of this court, the proceeds thereof to be deposited to the credit of this cause on or before the thirteenth day of October instant, then said order was to be void, and said Price was thereby enjoined and restrained from any endorsement or appropriation of any of said drafts otherwise than to said receiver or to said clerk for deposit as aforesaid. And your orators show that said drafts mentioned in the proviso contained in said order were not delivered as thereon stated whereby said order remained in force.

And your orators show that said receiver complied with said order

by filing such bond as therein directed, made and filed his official oath according to law, and entered upon the duties of his said office.

He thereupon caused to be served upon said Price a true copy of the said order, and demanded of him in writing annexed thereto that he deliver to him the said receiver, said drafts of nine thousand dollars, twenty thousand dollars, and two thousand seven hundred and four dollars and eight cents directed by said order
11 to be delivered to him, and further demand was in such writing made that if said drafts or either of them were not in his physical possession, but were held for him or subject to his control, whether alone or jointly with any other person, or deliverable upon the joint order of said Price and any other person, he was thereby required to give his consent and order in writing for their delivery to him, the said receiver, or to his order, and to direct the consent and order thereof to be given of any agent, attorney or trustee for him, and to do all things necessary within his power to put said receiver in possession and control thereof.

Said service of said order, together with said demands, though sought to be made upon the twelfth day of October, eighteen hundred and ninety-two, or thereabouts, was not made until on or about the twenty-second day of July, eighteen hundred and ninety-three, because the said Price was not to be found within this State in order to such service thereof, but notice of said order without said demand and by delivery of a copy thereof to him, was given to said Price elsewhere than in this State, shortly after the date thereof. And your orators show that on or about the — day of ——, eighteen hundred and ninety-two, an attachment was issued by this honorable court against said Price for contempt of this court in disobeying said order, of the eighth of August, one thousand eight hundred and ninety-two, and such proceedings were had thereon that after interrogatories filed and answered, and upon full proof of such disobedience, said Price was convicted of such contempt of this court by an order of this court bearing date the eighteenth day of May, eighteen hundred and ninety-four, and said Price was thereby directed to pay over to your orator, the said receiver, the sum of over thirty thousand dollars, besides a fine of fifty dollars and costs of said proceedings.

And said order further directed that on failure after five
12 days' service of a duly certified copy of said order upon him, to comply with the same, he should be imprisoned in the county gaol of said Bergen county until said order was performed.

And your orators further show that said forty-five thousand dollars or thereabouts, the amount of said four drafts, was part of a certain debt of seventy-six thousand dollars or thereabouts awarded to him, the said Rodman M. Price by the officers of the Treasury Department of the United States under an act of Congress of the United States passed February 23rd, 1891, and agreed to be paid to him in conformity with the directions contained in said act by said officers.

The drafts for only the said four amounts heretofore mentioned of two thousand seven hundred and four dollars and eight cents,

thirteen thousand five hundred dollars, twenty thousand dollars and nine thousand dollars were issued and given to said Price on account of said debt, of about seventy-six thousand dollars aforesaid, said officers at first believing there was a counter-claim on the part of said United States against said Price for a debt due by said Price by the Government of the United States, but afterwards and about the — day of ——, eighteen hundred and ninety-three it was made known to the representatives in that behalf of your orators, that the United States Treasury Department had reconsidered its former determination and was about to pay unto said Price a sum of about thirty-one thousand dollars still remaining due upon said sum awarded, and that said Price and his agents and attorneys were actively seeking to obtain payment of the same, and thereupon by order of this court and upon proof of a demand made by your orator, the said receiver upon the said Price, that he should sign and file his consent in writing with the Treasurer of the United States that said money remaining due as aforesaid should be paid to your orator the said receiver, and upon further proof that said Price refused so to do, another order was made by this court, dated on the same eighteenth day of May, eighteen hundred and ninety-four,
13 by which the said Price was directed to execute two certain instruments in writing, which before that time he had been required by this court to sign, seal, and deliver, one of them consenting that the balance of said money due to him by the United States should be paid by it, and by its Treasury Department unto your said orator Charles Borcherling, receiver as aforesaid, which consent should be filed with its said Treasurer, and the other of said instruments being an assignment in writing under his seal proposed to be made by him of all his property, real and personal whatsoever and wherever, of all rights and credits to him belonging, and said last-mentioned order directed that it should be served upon said Price by a delivery to him of a duly certified copy thereof.

And your orators show that at the time of service upon him of said duly certified copies of said orders respectively, said Rodman M. Price was sick, but was of sound mind, and capable physically of obeying the same, and especially of obeying the last mentioned of said orders, and executing, delivering and sending to their proper destination the two instruments in writing last above described; and your orators show that the said Rodman M. Price after such service made upon him of said two orders, and on or about the eighth day of June, eighteen hundred and ninety-four departed this life, to wit, at his residence in the county of Bergen, New Jersey.

And further your orators show that neither in the prerogative court, nor before the surrogate of Bergen county, or the orphans' court, thereof, has any last will of the said Price been presented for probate, of nor has any application been made for the issue of letters of administration as in case of intestacy to the said Rodman M. Price, deceased. And your orators show that, although certified copies of said orders, on or about the twenty-eighth day of May, eighteen hundred and ninety-four, were duly served as aforesaid,

yet the illness of said Price prevented any enforcement of said
14 first-mentioned order, and he departed this life without having paid the said money in said order directing his incarceration in case of disobedience to the sum mentioned and without affixing his signature to the instruments annexed to the second of said orders last mentioned or to either of them.

And your orators show that by reason of the premises your orators are without remedy for the recovery of the money belonging to your orator, the said receiver and due to your oratrix, the said administratrix, and that the object of the said bill of complaint by your oratrix, administratrix as aforesaid, is entirely frustrated, and that your orators are advised it is necessary that remedy should be sought in this honorable court against whosoever should be admitted, either as executor or administrator, to represent the said Rodman M. Price, deceased, while as to the said balance of said sum of seventy-six thousand dollars still unpaid and remaining in the hands of the Treasurer of the United States, and the disposition thereof according to law, your orators are without adequate remedy because of the legal impossibility of enforcing any decree directing the payment by the Treasury Department of the United States of said monies unto said receiver for your oratrix as aforesaid. And your orators show that nevertheless the officers of the said Treasury Department are desirous of doing right and justice in the premises; that demand has been made by your orator, the said receiver, upon the Treasurer of the United States for the payment of said balance of money over to him; that said Treasurer does neither consent or refuse so to do, and awaits the determination by some lawful tribunal of the right of said receiver in the premises, and your orators believe that on the decree by this honorable court that said receiver is entitled to said balance, and notice thereof duly given to said United States Treasurer, or the Secretary of the Treasury said decree will be respected, and said balance handed over.

15 And your orators further show unto your honor that on the ninth day of June, eighteen hundred and ninety-four, being the day after the death of said Rodman M. Price, deceased, Francis Price, Rodman M. Price, Madeline Price, E. Trenchard Price, and Governeur Price, children of said Rodman M. Price, deceased, executed a power or powers of attorney to John C. Fay, of Washington city, counsellor-at-law, and attorney in his lifetime for said Rodman M. Price, deceased, and who appeared in the course of the litigation in respect to said United States drafts in this honorable court as such attorney; and by such powers of attorney authorized said Fay to apply to the Secretary of the Treasury to pay to them the balance standing to the credit of said Rodman M. Price under said act of February twenty-third, 1891, and that said parties are now pressing said claim with the said Secretary of the Treasury, insisting that by the true construction of said act of February 23rd, 1891, said balance of said monies standing to the credit of said Price, deceased, belonged to them as his heirs-at-law, and that your orator, the said receiver, has no right in the law thereto, being the

same insistment made by said Price, deceased, in his answer to said petition as above stated.

And your orators show that the Treasury Department of the United States, acting under the said act, has settled with the said Rodman M. Price and credited him upon its books with the sum of about seventy-six thousand dollars, as being due to him, that it has as already aforesaid paid to him through said four drafts heretofore mentioned, a large portion of said money, reducing the said credit thereby; that it has further paid unjustly and the same was received by the said Price and his attorneys in fraud of the law and the orders of this court heretofore rendered in said suit hereby sought to be revived, and of the bill of complaint to which this bill is intended to be supplemental, over nine thousand dollars, thereby reducing the balance apparent on said books as due to said
16 Rodman M. Price in his lifetime to the sum of about twenty-three thousand dollars; that under a proper construction of said law, and by force of said receivership, and the laws of New Jersey, where said Price resided, said Price's right to all the balance aforesaid of said monies passed to your orator, the said receiver, and remains still in him; that in the true construction of the words in said act directing payment of said money to said Price and to his heirs, the said words "to his heirs" are simply words importing that the monies be awarded and paid to the legal representative of said Price, in case, before such award, he had departed this life; that the said receivership having worked a legal assignment by said Price to your orator, the said receiver, of all his rights and credits and property, legal and equitable, of whatever description, he is to be held in law as having received said monies and made assignment thereof unto your orator, the said receiver.

And your orators insist that there is no pretence of right in said children although heirs of said Price, to make the demands aforesaid, or seek payment of the said balance to them. And your orators further show that it was argued before your honor in this honorable court in the discussion of the motion for the two last orders made in this cause and hereinbefore particularized by counsel for the said Price in the presence of two at least of the said children, and with their consent, as set up in said Price's answer to said petition that under proper construction of said act of Congress of February 23rd, 1891, said monies in case of the death of said Price passed to said children as his heirs-at-law; and the same insistment was made as a reason why said order for assignment in writing thereof and the consent in writing to such payment should not be granted, and said argument was duly considered by this honorable court, which declared in its opinion filed and under which said orders were last mentioned were made, that said construction of said act was erroneous, and that said monies in case of the
17 death of said Rodman M. Price would, had there been no receivership go to his executors or administrators, but in view of said receivership that the same belongs to your orator, the said receiver.

And your orators show that the action of said children in demand-

ing said balance of said money is in fraud of said orders made by your honor, with which orders they were all acquainted, some at the time of delivering the same to said Price, deceased, and the others immediately thereafter; that some days before said service true copies of said order respectively were furnished to the counsel of said Rodman M. Price, and as your orators believe, were communicated by him to said children; that knowledge thereof was also communicated through some one or more of said children or otherwise to said John C. Fay, and that the application made to said Secretary of the Treasury as aforesaid, is in pursuance of agreement and conspiracy among all said parties including the said attorney Fay, to defeat the operation of said orders.

And your orators show and repeat that the right to said monies and to all estate, real and personal, whether in possession or action, belonging to the said Rodman M. Price at the said date of said order appointing your orator, the said Charles Borcherling receiver in this cause, and at the date prior thereto, of the issue of executions mentioned in said order, vested by law in your orator, the said Borcherling receiver as aforesaid, and has been so adjudged after solemn, careful consideration of this court; that by orders and process issued in this cause said Price and said Fay and all claiming under said Price were enjoined by this court from demanding said monies; that the receipt by said Fay of a part of said monies was in direct disobedience of the order of this court, and that any action such as that now taken on the part of the said children of said Price and of his said attorney, to hold or obtain any part of said property or rights in the monies awarded to said Price, constitutes a conspiracy to thwart and defeat the orders and decrees of
18 this court and contempt of its authority and jurisdiction and should be prevented by its decree.

And your orators further insist that the disposition of said money and the adjudication of the right thereof belongs in law and in equity exclusively to this honorable court, whose receiver claims the same under the law and his appointment, and that the action of said children of said Price in seeking to defeat the claim of said receiver, is a contempt of this honorable court; that it is their duty, the court having through its receiver and by express order made in this cause approbatory of his action in seeking to obtain the same from the Secretary, to come to this court and make any claim they have, thereto before your honor, and not to seek elsewise or elsewhere any adjudication or their right, much less to attempt to secure said monies. And your orators further show that as aforesaid, no application having been made by any person in any court having lawful jurisdiction for letters of probate of any will of the said Rodman M. Price, deceased, or for administration of his estate, as an intestate, application has been duly made to the honorable prerogative court of New Jersey, and letters of administration *ad prosequendum* have been granted unto Allan L. McDermott, wherefor said Allan L. McDermott is hereby made defendant to this bill of complaint, to the end that decree may be made for the revival of said suit and for such further decree in relation to the estate of said

Rodman M. Price, and such relief as to your honor shall seem meet and agreeable to equity and good conscience.

In tender consideration whereof, and forasmuch as your orators have no adequate remedy in the premises elsewhere than in this honorable court, to the end, therefore, that the said John C. Fay, Francis Price, Rodman M. Price, Madeline Price, E. Trenchard Price and Governeur Price, joined as defendants in this suit with the said Allan L. McDermott as administrator *ad prosequendum*
19 as aforesaid, may answer the premises, and that it may be decreed by this honorable court as follows, that is to say:

1. That said bill of complaint of your oratrix, filed in this court as aforesaid, in the year eighteen hundred and seventy-four, may be revived, and the said administrator *ad prosequendum* be adjudged to be a proper party hereto.

2. That the said Francis Price, Madeline Price, Rodman M. Price, Governeur Price, E. Trenchard Price and John C. Fay, may each and every of them be perpetually enjoined and restrained from making any demand upon or application to the Government of the United States, or the Secretary of the Treasury of the United States, or any officer of said Treasury, or from receiving from the United States or its said Secretary of the Treasury, or any officer thereof, any part of the money now remaining in the Treasury of the United States, and which was awarded to the said Rodman M. Price as herein aforesaid.

3. That the parties above named be ordered and decreed to pay to your orator the said Charles Borcherling, receiver as aforesaid, to be by him disposed of under the orders of this court, any part of said money which they respectively have received or hereafter may receive.

4. That said administrator *ad prosequendum*, or any executor or administrator of said Rodman M. Price, deceased, who shall hereafter be admitted and made a defendant in this suit may likewise answer this bill of complaint and be decreed to deliver and pay over to said receiver, the said Charles Borcherling, all property of said Rodman M. Price, whether in possession or action, which shall come to the hands of said executor or administrator, and to that end, he and the said children of said Price, do make discovery of all such property.

20 5. That such other and further relief be granted as shall be according to equity and good conscience.

6. May it please your honor the premises considered to grant unto your orators, not only the State's most gracious writ of injunction to be to the said persons above named, and who are defendants hereto, directed and issued out of this honorable court, enjoining and restraining them as hereinabove prayed, but also the State's most gracious writ of subpœna to be issued out of this court and directed to said persons respectively, thereby commanding them to appear before your honor — this court at a certain day, and under a certain penalty therein to be named, then and there to make answer to the premises as above prayed, and to abide such judgment and

decree therein as to your honor shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray.

CORTLANDT & WAYNE PARKER,
Solicitors of said Complainants.
CORTLANDT PARKER, *Of Counsel.*

ESSEX COUNTY, *ss:*

Cortlandt Parker, of said county, being duly sworn saith that he is a counsellor-at-law, and is one of the solicitors and counsel for the complainants in the above bill named; that he prepared the same; that the allegations therein of the action taken by John C. Fay and by the other parties named in said bill as children of Rodman M. Price, deceased, are made from information derived from his associate counsel in this litigation resident in Washington city, and that he believes said allegations to be true.

Deponent saith that all other allegations in said bill con-
21 tained are shown to be true by the proceedings and files remaining of record in this court in this cause.

And further saith not.

CORTLANDT PARKER.

Sworn and subscribed this second day of July, 1894, before me, at Jersey City.

HENRY C. McCARTIN,
Master in Chancery of New Jersey.

In the Chancery Court of New Jersey.

I, Frank W. Hackett, counsellor-at-law, of 486 La. Av., Washington, D. C., on oath depose and say that certain persons who allege that they are heirs of Rodman M. Price, have applied to the Secretary of the Treasury to pay to them the balance standing to the credit of said Rodman M. Price under act Feb. —.

They are Francis Price, Rodman M. Price, Madeline Price, E. Trenchard Price and Governeur Price. I recite these names from memory, but I think they are correct. They have filed an affidavit of the widow of said Rodman M. Price and power of attorney — to John C. Fay, of Washington. I have seen Mr. Fay's letter addressed to the Secretary of the Treasury asking that payment be made to these heirs, and I have seen the power of attorney, one of these papers according to my recollection is dated June 9th, I also know from a statement made to me by the said Fay that he is pushing this claim at the Treasury. He is the same John C. Fay who was of counsel for said Rodman M. Price. As representing the receiver, I have notified the Secretary of the Treasury that we protest against such payment.

I further state that I am of counsel for the receiver in the injunc-
tion proceedings against said Rodman M. Price, and that no
22 notice has been served on me or given to me in any way, of an application by any one to dissolve said injunction. I be-

lieve that the said Trenchard Price is a clerk in one of the departments and a resident of Washington.

FRANK W. HACKETT.

UNITED STATES OF AMERICA,
District of Columbia, City of Washington, } *To wit:*

Be it remembered that on this 21st day of June, A. D. 1894, in the District of Columbia, aforesaid, before me, Charles S. Bundy, who am a commissioner of deeds for the State of New Jersey, within said District, lawfully authorized to administer oaths and affirmations therein, personally appeared Frank W. Hackett, counsellor-at-law in said District, who being by me duly sworn upon his oath, says, that the foregoing statement is in his handwriting, and is signed by him, and is true of his own knowledge, except as to those matters stated therein upon his information and belief, and as to such matters he believes it to be true.

FRANK W. HACKETT.

Sworn and subscribed before me this 21st day of June, 1894.

[L. S.] CHARLES S. BUNDY,
Commissioner of Deeds of the State of New Jersey within and for the District of Columbia.

A true copy.
ALLAN McDERMOTT, *Clerk.*

Upon filing the within bill and affidavits thereto annexed let an injunction issue, restraining the defendants, Francis Price, Madeline Price, Rodman M. Price, Governeur Price, E. Trenchard Price and John C. Fay and each of them from making any de-
22*a* mands upon or application to the Government of the United States or the Secretary of the Treasury of the United States, or any officer of said Treasury, or from receiving from said Treasury or any officer thereof, any part of the money, or the whole thereof now remaining in said Treasury, which was awarded or credited to Rodman M. Price, deceased, as in this bill stated.

Dated July 2nd, 1894.

ALEX. T. McGILL, *C.*

In Chancery of New Jersey.

Between—

ANNA M. FORREST, Administratrix of Samuel Forrest, Deceased, Complainant,
and
RODMAN M. PRICE, Defendant.

On Bill of Revivor and Original Bill in the Nature of Supplemental Bill.

Plea.

The joint and several plea of Madeline Price and Governeur Price, defendants, to the bill of complaint of Anna M. Forrest, administratrix of Samuel Forrest, deceased, as a bill of revivor and original bill in the nature of a supplemental bill against these defendants and others.

These defendants, Madeline Price and Governeur Price, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, for plea thereunto say:

That Rodman M. Price, late of Bergen county, in the State
22½ of New Jersey, departed this life on the seventh day of June, eighteen hundred and ninety-four, intestate, leaving him surviving Matilda C. S. Price, his widow, and Francis Price, Madeline Price, Rodman M. Price, Governeur Price, and E. Trenchard Price, his heirs-at-law, and among whom are these defendants, Madeline Price and Governeur Price; that the said Rodman M. Price, deceased, was not seized at the time of his death of any messuages, lands, tenements or hereditaments in the State of New Jersey or elsewhere, and that no messuages, lands, tenements or hereditaments descended to these defendants or either of them from their said father; neither were any lands, tenements, or hereditaments devised by the said Rodman M. Price, deceased, to these defendants, or either of them; and further, neither these defendants, or either of them have any knowledge, information or belief as to the personal estate of the said deceased, except that the said Rodman M. Price, deceased, had at his death no personal estate or property whatever, as they believe, and that neither of these defendants has had or hath the possession, ownership or control of any personal estate whatever from their said father, or any knowledge of the existence anywhere of any such estate; neither have these defendants, or either of them, received any moneys from the Government of the United States, either through their father, Rodman M. Price, or otherwise, under or by virtue of the act of Congress referred to in the said bill of complaint, which act was approved by the President, February twenty-third, eighteen hundred and ninety-one, and of which the following is a copy:

"An act for the relief of Rodman M. Price."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury of the United States be and he is hereby authorized

and directed to adjust upon principles of equity and justice the accounts of Rodman M. Price, late purser in the United States
22c Navy, and acting navy agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January fourteenth, eighteen hundred and fifty, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment.

"Approved February 23, 1891."

But as to all moneys not actually received by the said Rodman M. Price, deceased, in his lifetime, from the Government of the United States upon the adjustment under said act, whether it be the sum of twenty-three thousand dollars mentioned in the said bill, or any other sum greater or less, actually remaining unpaid to the said Rodman M. Price at his death, these defendants, together with the other heirs of the said Rodman M. Price, deceased, referred to in said act, are entitled to thereunder by special designation in the said act, as his heirs, and the said moneys so remaining unpaid are in no way chargeable with the debts and liabilities of the said Rodman M. Price deceased, or to any of his creditors, and that *to* all such moneys so unpaid to the said Rodman M. Price, in his lifetime, are payable by the Government of the United States directly and exclusively to these defendants and the other heirs of the said Rodman M. Price, deceased, out of any money in the Treasury not otherwise appropriated and for the benefit of the said heirs respectively, without any claim whatsoever upon the same by the complainant. The balance unpaid as aforesaid to the said Rodman M. Price in his lifetime, and to which these defendants, together with the other heirs of said deceased, are entitled as aforesaid, which balance these defendants say and believe is about twenty-three thousand dollars, is a part of the sum referred to in said act as paid over to and receipted for by A. M. Van Nostrand, acting purser, January 14, 1850.

22d That on or about the sixth day of December, eighteen hundred and forty-eight, in the early settlement and development of California, the said Rodman M. Price, deceased, was assigned to duty upon the Pacific coast at California, as purser and fiscal agent of the Government of the United States for the Navy Department of the United States, he then being a purser in the United States Navy, and acted as such up to about December, eighteen hundred and forty-nine, or January, eighteen hundred and fifty, when he was detached by the Government of the United States from such duty and ordered to transfer all public money and public property remaining in his hands to his successor, or to such other disbursing officer of the navy as might be designated by the commanding naval officer of the naval station of California, and immediately after such transfer to report to the city of Washington for the purpose of settling his accounts. Afterwards, in the month of December, eighteen hundred and forty-nine, A. M. Van Nostrand, referred

to in the said act of Congress, became the successor of the said Rodman M. Price, deceased, in California aforesaid, as acting purser in the Navy of the United States. Afterwards on or about the thirty-first day of December, eighteen hundred and forty-nine, Commodore Jones of the United States Navy, commanding the United States squadron at San Francisco, California, on behalf of the Government of the United States, directed Acting Purser Van Nostrand, aforesaid, to call on Purser R. M. Price, aforesaid, and to receive from him all books, papers, office furniture and funds on hand belonging to the purser's department at San Francisco. In accordance therewith and with the instructions aforesaid to the said Purser Price, he paid over on the thirty-first day of December, eighteen hundred and forty-nine, to the said Van Nostrand, acting purser of the United States Navy at the San Francisco station in California, the sum of forty five thousand dollars, being all the public moneys of the United States in the hands of the said purser Price.

22e Afterwards, on the fourteenth day of January, eighteen hundred and fifty, the said Rodman M. Price, out of his private moneys alone and not of the Government of the United States, advanced to the said Van Nostrand seventy-five thousand dollars, and took his receipt thereof as follows:

"SAN FRANCISCO, *January 14th*, 1850.

"Received from Rodman M. Price, purser U. S. Navy, seventy-five thousand dollars, for which I hold myself responsible to the United States Treasury Department, $75,000. (Duplicate.)

"A. M. VAN NOSTRAND,
"*Acting Purser.*"

Which advance was without the approval and signature of Commander Jones, the commanding officer of the said acting purser, A. M. Van Nostrand, although the said Rodman M. Price regarded the advance as an accommodation to the Government of the United States at that time being in the early history of California.

Previous to the approval of the act of Congress aforesaid and the adjustment of the accounts therein referred to, the Government of the United States had always declined upon request made by the said Rodman M. Price, deceased, to pay or reimburse him for the said sum of seventy-five thousand dollars, or any part thereof. The said A. M. Van Nostrand never returned or paid the said money or any part thereof to the said Rodman M. Price; neither did he account for the sum to the Government of the United States. Previous to the twelfth day of March, eighteen hundred and fifty-four, the Honorable Caleb Cushing, then Attorney General of the United States and acting as such, in obedience to the request of the Honorable James C. Dobbin, then Secretary of the Navy of the United States, investigated the claim of the said Rodman M. Price, deceased, against the Government of the United States for the reimbursement or payment to him of the said seventy-five thousand dollars

22f by the Government aforesaid, and gave an opinion that the Government of the United States was not responsible for and

could not be charged with the private funds paid by Rodman M. Price aforesaid to the said Van Nostrand and without the written approval of the said commanding officer, Commodore Jones. A copy of which opinion in full is annexed to this plea making part thereof, and to which reference is made for all the facts therein stated and the matters of law and otherwise therein contained.

Previous to the giving of the opinion aforesaid the said Rodman M. Price, deceased, had frequently claimed of the Government of the United States the payment of the said seventy-five thousand dollars, but the said Government had always declined to pay the same; after the giving of the said opinion the Government of the United States continued to decline to pay the same, up to the time of the approval of the said act of Congress and the adjustment of the accounts therein referred to, always denying and disputing the liability of the said Government to pay the same. And these defendants say that the said claim was not a lawful claim against the Government of the United States for which it was lawfully liable; but in view of the fact that the money had been paid or advanced by the said Rodman M. Price, deceased, as aforesaid, in the belief that it would be an accommodation to the said Government in the condition of things that existed in the early history of California at that time, and in view of the fact that the said Rodman M. Price had become old, and had been in the service of the Government of the United States as a purser in the navy for many years, and also governor of the State of New Jersey, and that it was equitable and just, apart from the question of the lawfulness of the claim, that he or his heirs mentioned in the said act of Congress should be paid the said sum of seventy-five thousand dollars, the said act of Congress was accordingly passed.

In accordance with the said act the Secretary of the Treas-
22 ury of the United States, in or about the month of August, eighteen hundred and ninety-two, adjusted the accounts of the said Rodman M. Price, late purser in the United States Navy and acting navy agent at San Francisco, California, crediting him with the said sum of seventy-five thousand dollars, paid over to as aforesaid and receipted for by his successor, A. M. Van Nostrand, acting purser, January 14, 1850, leaving the sum of seventy-six thousand, two hundred and four dollars and eight cents found due him; the said Rodman M. Price, deceased, upon such adjustment, according to the intent and meaning of the said act, which sum includes the whole of the said seventy-five thousand dollars as a part thereof, of which these defendants admit the said Rodman M. Price, deceased, in his lifetime, actually received four drafts from the Government of the United States, and the money therefor, amounting to forty-five thousand, two hundred and four dollars and eight cents, and that the balance thereof of thirty-one thousand dollars, which is part of the said seventy-five thousand dollars after deducting any other sum actually paid to the said Rodman M. Price, thereon in his lifetime by the Government of the United States, these defendants, being the heirs of the said deceased, together with the other heirs

aforesaid, are entitled to as aforesaid under and by virtue of the said act of Congress and adjustment aforesaid.

All which matters and things the defendants aver to be true and plead the same to the said bill, and humbly ask the judgment of this honorable court whether they ought to be compelled to make any answer to the said bill of complaint, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

BEDLE, McGEE & BEDLE,
Solicitors for and of Counsel with the Defendants Madeline Price and Governeur Price.

22*h* ATTORNEY GENERAL'S OFFICE, 12*th March*, 1854.

SIR: "Your letter of the 12th of January presented certain questions of law, to understand which, and the conclusions to which my mind has come on the subject it is necessary to state the material facts as they appear by the documents transmitted.

"On the 6th of December 1848, a letter of instructions issued from the Secretary of the Navy (the Hon. I. Y. Mason) to Rodman M. Price, purser U. S. Navy, to the following effect:

"The cost of obtaining funds for the naval disbursements in the Pacific ocean, has, for many years, embarrassed the department. The acquisition of an extensive front on that ocean renders it very important to the naval service that measures should be at once adopted to provide means for their disbursement without any loss of exchange directly in the sale of bills, or indirectly by drawing on London. If it can be successfully established, as I doubt not it can be, that bills on the department, at short dates, can be converted into coin at an advance beyond their value on their face, the result will be highly important; it will promote exchange on our Atlantic cities, and may supercede the necessity of the expensive agency at Lima. You will proceed by the most speedy conveyance across the isthmus, to San Francisco, and establish yourself there or at Monterey. * * * Your duty will be to procure funds for the squadron and other public naval purposes, on bills drawn on the Navy Department. You will, when required by the commodore or the squadron naval officer present, effect such negotiations, taking care never to sell a bill below par, and realizing for the service any amount of premium which the market affords. If such negotiations are impracticable on the terms suggested, you are authorized to call on John Parrott, Esq., temporary navy agent at Mazatlan,
22*i* and who has authority to draw on London. * * * The steam propeller Massachusetts expected to reach San Francisco in February next, will be placed in command of a naval officer. You will discharge the duties of purser, while she is so engaged, and will be allowed a clerk on board.

"You will pay all officers of the navy on special service in California, or who may be in that part of the United States detached from service.

"You will communicate with the department on all and every

suitable opportunity, and in all cases give due notice of bills drawn.

"The duty on which you are employed, * * * the objects of the department * * * are to save the expense of transmitting specie to the Pacific, to dispense with bills on London, by introducing those on Washington, to realize a premium to the extent of the local market, and to promote economy in the naval disbursements."

Under these instructions Purser Price proceeded to San Francisco and Monterey.

On the 4th of August, 1849, the Secretary of the Navy, Hon. William Ballard Preston, issued to Commodore Thomas A. Caterby Jones, commanding U. S. squadron, San Francisco, California, this order:

"The department desires that the accompanying order, addressed to Purser Rodman M. Price, be handed to him at the earliest day practicable, and you will be pleased to afford all the facilities in your power for his speedy return to Washington."

"NAVY DEPARTMENT, *August* 4, 1849.

"Purser Rodman M. Price, U. S. Navy, San Francisco, Cal.

"SIR: You are hereby detached from duty at the naval station of California, assigned to you under letter of instructions addressed to you by this department on the 6th December last, and you will transfer all public money and public property remaining in
22*j* your hands to your successor, or to such other disbursing officer of the navy as may be designated by the commanding naval officer of that station. Immediately after such transfer you will repair to the city of Washington for the purpose of settling your accounts."

The above were received at San Francisco by Commodore Jones on the 10th of October, 1849, by the mail steamer California.

By letter of the same date addressed to Mr. Price then at Monterey, by Commodore Jones from flagship Savannah, bay of San Francisco, the purser was informed of his recall to Washington:

"You will perceive that it may devolve on me to appoint your relief which I shall defer doing for the present, in the expectation that the forthcoming steamers, on their way from Panama, may bring a successor, or some specific instructions for my guidance."

On the 9th of December, 1849, Purser Price, having returned from Monterey to San Francisco, addressed this letter to Commodore Jones at San Francisco:

"SIR: Under my instructions from the Navy Department, of 6th December, 1848, I have been paying all the navy officers on special service in California and those detached from service. As I am detached from duty and no successor has arrived, I have to ask your order to designate to whom I shall transfer the pay-rolls and accounts of this station, and also, the Government property belonging to this office."

On the 22d of December, 1849, Commodore Jones appointed as acting purser of the sloop-of-war Warren, then at anchor in the port of San Francisco, Mr. A. M. Van Nostrand, who thereupon gave bond to the United States in the penalty of $30,000 with two sureties, Augustus I. Bowie and Rodman M. Price (each of whom justified to the sum of $30,000 over and above liabilities) conditioned that Van Nostrand should faithfully discharge his duties as acting purser in the Navy of the United States. This bond and security being approved by Commodore Jones, Van Nostrand took
22k the oath of office as purser. Van Nostrand was the clerk of Purser Price and had been long connected with the navy at the New York station.

Thereafter, December 31st, 1849, Commodore Jones addressed an order to Acting Purser Van Nostrand, directing him to call on Purser R. M. Price and to receive from him "all books, papers, office furniture and funds on hand belonging to the purser's department at San Francisco."

This order being shown to Purser Price, he, on the same day, paid to Van Nostrand and took his receipt in these words and figures:

"SAN FRANCISCO, *December 31st*, 1849.

"Received from Purser Rodman M. Price, forty-five thousand dollars for which I hold myself accountable to the Government of the United States."

"A. M. VAN NOSTRAND,
"*Acting Purser of the San Francisco Station.*"

Thereafter Mr. R. M. Price paid another sum to Van Nostrand and took therefor this receipt:

"SAN FRANCISCO, *January 14th*, 1850.

"Received from Rodman M. Price, purser U. S. Navy, seventy-five thousand dollars, for which I hold myself responsible to the United States Treasury Department. $75,000. (Duplicate.)

"A. M. VAN NOSTRAND,
"*Acting Purser.*"

The former sum of $45,000 included all the public money. The latter sum of $75,000, was the private money of R. M. Price, as he states in his letter of December 16th, 1852, to the 4th auditor A. O. Dayton, which he saw proper to put in the hands of Van Nostrand. "I made (says Mr. Price) a large transfer of money to my successor, which was on accommodation to the Government and suited my private convenience as a remittance, believing that I would
22l immediately receive the balance found due on the adjustment of my accounts here."

That the latter sum of $75,000 was not the public money, but an advance to Van Nostrand from the private funds of Mr. Price, is also shown by his accounts rendered to the department of his receipts and disbursements up to the 31st of December, 1849, whereby, including this receipt of 14th of January, 1850, Mr. Price claims, upon his

transactions at San Francisco, upwards of seventy thousand dollars as due to him from the United States.

Commodore Jones, immediately after the appointment of Van Nostrand, addressed a letter to the Secretary of the Navy, giving him the information.

On the 12th of March, 1850, Mr. Secretary Preston wrote to Commodore Jones, disapproving of the appointment of Van Nostrand, and directing that no money be placed in his hands, which letter Commodore Jones did not receive until June, 1850.

The Department of the Navy in dispatching the letters of the 4th of August, 1849, to Commodore Jones and to Purser Price, at San Francisco did not foresee and provide specially for the exigency which was occasioned by the discharge of Purser Price from his duties at the naval station at California. Subsequently an attempt was made by Mr. Secretary Preston to provide for such exigency, by sending out John N. Hambleton, who sailed in the U. S. ship Vandalia on the 5th of September, 1849, from Norfolk around Cape Horn, but did not arrive at San Francisco until April 12th, 1850, more than three months after Commodore Jones had appointed Mr. Van Nostrand, and after Mr. Price had paid over the two sums in question to Mr. Van Nostrand, Commodore Jones had not been informed of the sending of Mr. Hambleton to succeed Purser Price. The letter from the Navy Department to Commodore Jones, to inform him of the embarkation of Mr. Hambleton on board the Vandalia at Norfolk on the 5th of September, 1849, bears date 10th December, 1849, and was not received at San Francisco until
22*m* long after the money had been paid over by Mr. Price to Mr. Van Nostrand.

Upon these facts, the following questions of law arise, as propounded by you, namely:

"1st. Whether the appointment by Commodore Jones of Mr. Van Nostrand as an acting purser was valid under 'the rules of 1817' and the sixth section of the act of Congress 'concerning the naval establishment,' approved March 30th, 1812.

"2nd. If the appointment was valid, whether the department has authority to sanction the *advance* made by Mr. Price to Mr. Van Nostrand beyond the amount of *public money* which Mr. Price had on hand on the 31st of December, 1849."

The first question alludes to the act of 30th March, 1812, "concerning the naval establishment" (II Stat. at Large, p. 699), which enacts that pursers in the Navy of the United States "shall be appointed by the President of the United States, by and with the advice and consent of the Senate; and that from and after the first day of May next, no person shall act in the character of purser, who shall not have been thus first nominated and appointed, excepting pursers on distant service, who shall not remain in service after the first day of July next, unless nominated and appointed as aforesaid. And every purser, before entering upon the duties of his office, shall give bond with two or more sufficient sureties in the penalty of ten thousand dollars, conditioned faithfully to perform all the duties of a purser in the Navy of the United States."

By a supplement to this act, approved 1st March, 1817 (III Stat. at Large, p. 350), it is provided that "every purser now in service, or who may hereafter be appointed, shall, instead of the bond required by the act to which this is a supplement, enter into bond with two or more sufficient sureties in the penalty of twenty-five thousand dollars, conditioned for the faithful discharge of his duties as purser in the Navy of the United States, which said sure-
22n ties shall be approved by the judge or attorney for the United States for the district in which such purser shall reside.

"SEC. 2. That from and after the first day of May next, no person shall act in the character of purser who shall not enter into bond as aforesaid, excepting pursers on distant service who shall not remain in service longer than two months after their return to the United States unless they shall comply with the provisions of the first section of this act."

But the statute prohibiting persons to act unless first approved by the Senate, must have a construction consistent with the exception to the power of the Senate contained in the Constitution, whereby, "the President shall have power to fill all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session;" so that the statute shall not be in conflict with the Constitution. That is to say, there is an exception not expressed in the statute, but necessarily implied.

The Constitution itself in relation to the power of the President to fill up "vacancies which may happen during the recess of the Senate," must have a reasonable construction, adapted to the end, utility and practical effect intended in conferring that power. If a vacancy happens during the session of the Senate, but does not come to the knowledge of the President until the recess of the Senate, yet the President may fill up the vacancy by a commission to expire at the end of their next session (Mr. Faney's opinion of July 19th, 1832). Such construction is necessary and proper considering the vast extent of territory subject to the Government of the United States, and especially when considered in reference to officers of the navy on far distant service, in the different seas and oceans.

In such distant service, vacancies will happen which cannot abide to be filled until the President may be informed and exercise
22o his appointing power. To meet such exigencies, the regulations of the navy, contained in what is called commonly, the Blue Book, have made provision. These regulations were prepared under the act of Congress of the 7th of February, 1815, (III Stat. at Large, p. 202), were approved by the President, promulgated in 1817, and communicated to Congress by President Monroe's message of the 20th of April, 1818. In those regulations, under the head of "appointments," sec. 2 —:

"On foreign stations a commander may, when absolutely necessary, give acting appointments to fill vacancies which may be occasioned by death or other circumstances; but, in such cases, he shall take the earliest opportunity to make known the circumstances to the Secretary of the Navy, and state his reasons for making such

acting appointments." (Blue Book of Naval Regulations, p. 37. American State Papers, Naval Affairs, p. 516.)

The regulation above quoted has not been abrogated, but has been, ever since its promulgation, considered as entitled to respect and obedience. Many acting appointments, including acting pursers, have been made under it, which have received the recognition of the President, the Navy Department, the accounting officers of the Treasury and the Judiciary. For the present it will suffice to cite the case of Lieutenant Randolph, appointed acting purser after the death of Purser Timberlake, whose accounts as acting purser were adjusted by the accounting officers of the Treasury. The attempt at a readjustment of them produced the decision of Chief Justice Marshall and Mr. Justice Barbour, in the circuit court of the United States for the district of Virginia, November term, 1833. (11 Brockenborough, 466–487, *ex parte* Randolph.)

The filling up a vacancy by an appointment of one to act *ad interim* and for a particular exigency in a distant service, is in its nature an executive, ministerial, and administrative power. Independently of the act of February 7th, 1815, it was within the constitutional power of the President to make the regulation
22*p* before quoted. He is limited in the exercise of his powers by the Constitution and the laws, but it does not follow that he must show a statutory provision for everything he does. The Government could not be administered upon such a contracted principle. The great outlines of the movements of the Executive may be marked out and limitations imposed upon the exercise of his powers, yet there are numberless things which must be done which cannot be anticipated and defined and are essential to useful and healthy action of government.

In the acts of 1812 and 1817, before quoted, for regulating the appointment and qualifications of pursers, there are express exceptions as to pursers appointed or to be appointed, on distant service. In 1849 there was neither district judge nor district attorney to approve the sureties of Acting Purser Van Nostrand.

The power of the President to make rules and regulations for the navy and the army, not contravening the Constitution and the laws, but purely executive and administrative, has been adjudged by the Supreme Court of the United States in the cases of The United States *vs.* McDaniel (VII Peters, 14); United States *v.* Eliason (XVI Peters, 301); Gratiot *vs.* United States (XV Peters, 370, 371, 373, 375); United States *vs.* Freeman (III Howard, 567).

The validity of such regulations is alluded to and acknowledged in the third section of the act of March 3rd, 1839, and in the second section of the act of August 23rd, 1842 (V Stat. at Large, p. 349 and p. 510).

The Secretary of the Navy is the regular constitutional organ of the President of the United States for the administration of the naval affairs of the Government. The President is the Commander-in-chief of the Navy and Army.

Commander Jones was not at liberty to question or defy the regulations promulgated by the President of the United States, nor to

disobey the orders issued to him from the Navy Department. Such acts would have been breaches of proper discipline and dis-
22q organizing. (United States *vs.* Eliason, XVI Peters, 302.) Such disobedience might have subjected Commodore Jones to the penalty of "death, or such other punishment as a court-martial shall inflict," as enacted by the 14th article of the rules and regulations adopted by Congress for the government of the navy (act of 23d April, 1800, 11 Stat. at Large, p. 47).

II. I proceed now to consider the second question namely, whether Mr. Price is entitled in law to be credited by the Government with the sum of money paid by him to Mr. Van Nostrand on the 14th of January, 1850, or in other words, whether the Government and through the Government the sureties of Van Nostrand, are responsible to Mr. Price for this money.

It may be assumed as a general doctrine of administrative law that public officers, either of deposit or disbursement, can make the Government and their sureties, responsible only for *official* acts.

As a plain corollary from this doctrine it may in like manner be assumed that, if any citizen of the United States deposit his own private money for safe keeping, or for transmission and remittance, in the hands of a public officer, such as a collector of customs, and assistant treasurer of the United States, a paymaster in the army or a purser in the navy, no liability in the premises can be thereby cast on the Government.

It is quite immaterial in such cases what writings may have passed between the depositor and the bailee, what engagements the latter may have entered into with the former. No officer of the Government can bind the Government except in things, and to the extent, which his official duties, under acts of Congress and the lawful instructions of the proper executive superior, may authorize and require.

This doctrine, with all its incidents and consequences, is no peculiar privilege or claim of right on the part of the Government; but belongs to the ordinary question of the power of an agent to bind his principal.

22r A master, by the general rules of law, is liable for the acts of his servants, if done by his command, either expressly given or implied, but not otherwise. (1 Blacks. Comm., 429.)

Therefore, the Supreme Court of the United States says:

It is by no means true that the acts of agents derive their validity from professing, on the face of them, to have been done in the exercise of their agency. The liability of the principal depends upon the facts.

1. That the act was done in the exercise; and 2, within the limits of the powers delegated. (Mechanics' Bank *vs.* Bank of Columbia *v.* Wheaton, 326. See also Foster *vs.* Essex Bank, XVII Mass. R., 479.)

This rule applies to all cases in which the official acts of an agent are to be distinguished from his private or personal acts whether he be the agent of an ordinary principal, or an officer of the Government.

It seems undeniable that this money in the present case was the private funds of Mr. Price. He, himself so declares, and the accounts as stated by the second auditor, confirm his declaration.

The present inquiry, therefore, must be a special one—whether the money paid by Mr. Price to Mr. Van Nostrand on the 13th of January, 1850, was received by the latter officially, and according to law, for official purposes.

Now the 26th of the regulations of the navy contained in the Blue Book, so called, is in the following words:

"No purser shall draw money at any time or place without the approval and signature of his commanding officer." (American State Papers, Naval Affairs, p. 527.)

This regulation is imperative, absolute, without qualification of circumstances. I comprehend the subject-matter, for it is of no moment, so far as regards the question of the power of a purser to draw money, whether it is taken from a banker or other person
22s on the spot, or at a distance, whether by verbal draft or by written draft, whether by payment received on the technical drawing of a bill of exchange, or, as in this case, by an implied draft on the Treasury of the United States.

The regulation is a valuable and wise one, too; it being the only effective check on the power of a purser to receive money abroad in the name of the Government.

Nothing remains, therefore, but the inquiry whether this payment to Van Nostrand was made with the written approval of the commanding officer of himself and of Mr. Price.

The order to Commodore Jones, as before given, was that Van Nostrand should receive from Mr. Price all books, papers, office furniture, and funds belonging to the purser's department at San Francisco. This order was in conformity with that from the Navy Department to Mr. Price, which was to transfer to his successor all public money and public property remaining in his hands; and the application of Mr. Price to Com. Jones thereon was for the designation of a purser to whom he might transfer the pay-rolls and accounts of the station and the Government property belonging to the office. All these documents unequivocally exclude the idea of the approval and signature of Com. Jones having been given to the payment of this money to Van Nostrand.

My opinion therefore upon the whole is:

1. That the appointment of Van Nostrand as acting purser by Com. Jones was lawful and valid under the circumstances, and that the subsequent disapproval of the appointment of Mr. Secretary Preston could not retroact to make void previous lawful acts of the acting purser, in his receipt from Mr. Price of public money and other public property, in obedience to the order of Com. Jones.

2. That the Government is not responsible for and cannot be charged with the private funds paid by Mr. Price to Van Nostrand.

22t I have the honor to be with high respect your obedient servant,

(Signed) C. CUSHING.

Hon. James C. Dobbin, Secretary of the Navy.

STATE OF NEW JERSEY, } ss.:
County of Hudson, }

Madeline Price and Governeur Price, each of full age, being duly sworn according to law on their oaths respectively say: that they are defendants in the foregoing plea, and that the same is not interposed for delay, but in good faith for the causes therein set forth.

MADELINE M. PRICE.
GOVERNEUR PRICE.

Sworn and subscribed before me this 22nd day of September, 1894.

THEO. RURODE,
[L. S.] *Notary Public of New Jersey.*

We do certify that we have perused the complainant's bill in the above-stated cause foregoing, and that the above plea is well founded in point of law.

J. D. BEDLE,
FLAVEL McGEE,
Of Counsel with Defendants Madeline Price and Governeur Price.

III. A plea identical with the foregoing, except as to the names, was filed by Francis Price, Rodman M. Price and E. Trenchard Price.

22*a* In Chancery of New Jersey.

Between—

ANNA M. FORREST, Administratrix of Samuel Forrest, Deceased, and Charles Borcherling, Receiver, Compl'ts,
and
RODMAN M. PRICE ET ALS., Def'ts.

This matter having been set down for argument upon bill and pleas and the chancellor having heard counsel and considered their arguments, and he being of opinion that the pleas should be overruled—

It is on this twenty-ninth day of July, A. D., eighteen hundred and ninety-five ordered that the defendants' pleas be and the same hereby are overruled with costs.

And it is further ordered that the defendants answer the bill within thirty days from the service of a copy of this order upon their solicitors in this cause.

(Signed) ALEX. T. McGILL, *C.*

I, Allan McDermott, clerk of the court of chancery of the State of New Jersey, the same being a court of record, do hereby certify that the foregoing is a true copy of the order overruling
[SEAL.] pleas, in a cause wherein Anna M. Forrest, adm'x of Samuel Forrest, dec'd, and others, are complainants, and

Rodman M. Price, and others, are defendants, now on the files of my office.

22*v* In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Trenton, this first day of August, A. D., eighteen hundred and ninety-five.

ALLAN L. McDERMOTT, *Clerk.*

Filed July 31, 1895.

In Chancery of New Jersey.

Between—

ANNA M. FORREST, Administratrix of Samuel Forrest, Deceased, and Charles Borcherling, Receiver, Complainants,
ads.
RODMAN M. PRICE ET ALS., Defendants.

The defendants hereby appeal from the order overruling pleas in the above-stated cause dated the twenty-ninth day of July, eighteen hundred and ninety-five, and from the whole and every part thereof, to the court of errors and appeals in the last resort in all causes.

Dated August 5th, 1895.

McGEE, BEDLE & BEDLE,
Solicitors of Defendants.

We conceive there is good cause for appeal in the above-stated cause.

McGEE, BEDLE & BEDLE,
Of Counsel with Defendants.

22*w* We acknowledge service of the within notice of appeal, Aug. 5th, 1895.

CORTLANDT & WAYNE PARKER,
Solicitors of Complainants.

Aug. 29, '95, orig. of above ack. of ser. filed.

New Jersey Court of Errors & Appeals.

Between—

RODMAN M. PRICE ET AL., Appellants,
and
ANNA M. FORREST, Administratrix of Samuel Forrest, Deceased, *et al.*, Respondents.
} Petition on Appeal.

To the honorable the court of errors and appeals in the last resort in all causes:

The petition of Rodman M. Price, E. Trenchard Price, Francis Price, Madeline Price, Governeur Price and Matilda Price, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by an order made in the court of chancery on the twenty-ninth day of July, eighteen hundred and ninety-five, wherein the said Anna M. Forrest, administratrix of

Samuel Forrest, deceased, and Charles Borcherling, receiver, were complainants, and the said appellants were defendants in this respect, to wit, that the said order adjudges that the defendants' pleas be overruled with costs, and that the defendants answer, plead or demur within thirty days from a service of a copy of said order upon their solicitors in said cause.

22*x* And your petitioners humbly appeal from said order on the ground that the same is erroneous, for that whereas the order should have adjudged that the said pleas do and each of them do stand, and be allowed, with costs to be taxed.

Your petitioners therefore pray that the said order of the said chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court may seem meet.

Dated August 30th, 1895.

McGEE, BEDLE & BEDLE,
Solicitors for and of Counsel with Appellants.

Service acknowledged August 30th, 1895.
CORTLANDT & WAYNE PARKER, *Sol'rs.*

Usual joinder in appeal.

22*y* Court of Errors and Appeals in the Last Resort in All Causes in and for the State of New Jersey.

Between—

RODMAN M. PRICE, E. TRENCHARD PRICE, Francis Price, Matilda Price, Madeline Price, and Governeur Price, Appellants, and ANNA M. FORREST, Administratrix of the Rights and Credits, Goods and Chattels, Moneys and Effects of Samuel Forrest, Deceased, and Charles Borcherling, Receiver, Appellees.	On Appeal from the Court of Chancery of New Jersey. Final Decree.

This cause coming before the court at the November term thereof, eighteen hundred and ninety-five, upon the bill of complaint of the said Anna M. Forrest, administratrix as aforesaid, and the said Charles Borcherling, receiver, complainants against the said Rodman M. Price and others above named as appellants in this court (defendants), the pleas of the said appellants, defendants below, to the said bill of complaint, and the decree of the said court of chancery of New Jersey thereupon rendered in favor of the said Anna M. Forest, administratrix and Charles Borcherling, receiver, against the said appellants, defendants below, adjudging that the said pleas of the said defendants should be and the same were thereby overruled, with costs, and that the said defendants should answer said bill within thirty days from the service of a copy

22*z* of said order upon their solicitors in this cause; from which said order the said appellants made their appeal to this court,

in which appeal said complainant duly joined; and the matter arising upon said appeal having been duly argued by Flavel McGee of counsel for the appellants, and Cortlandt Parker, of counsel for said appellees, and the court being of opinion that the pleas of the said appellants made in the court below were not valid in law, for that the act for the relief of Rodman M. Price passed by the Congress of the United States and approved by the President on the twenty-third of February, eighteen hundred and ninety-one, and set forth in said pleas, and each of them, did not entitle the defendants below, appellents in this court, though being and claiming as his heirs-at-law, to the payment unto them of the said sum of money mentioned in the said bill of complaint, and in said pleas, actually remaining unpaid by the Treasurer of the United States to the said Rodman M. Price at his death, but that said moneys so remaining unpaid, are payable to the said Charles Borcherling, appointed receiver in the lifetime of said Rodman M. Price, deceased, as stated in said bill of complaint, of the property and things in action belonging or due to, or held in trust for, said Rodman M. Price at the date of said order appointing said Borcherling receiver mentioned, and at the previous times therein mentioned.

It is now, on this second day of March, eighteen hundred and ninety-six, as yet of the term of said November aforesaid, ordered and decreed by the court that the order of said court of chancery from which appeal was taken, be and the same is hereby in all things affirmed; and that the record and proceedings in this cause be and the same is hereby ordered to be remitted to the said court of chancery, with directions to proceed therein according to law.

The above decree is in accordance with the opinion of the court to be filed, and may be entered.

JOB H. LIPPINCOTT, *J.*

22½ In Chancery of New Jersey.

Between—

RODMAN M. PRICE, E. TRENCHARD PRICE, Matilda Price, Madeline Price, and Governeur Price, Defendants, and ANNA M. FORREST, Administratrix of the Rights and Credits, Goods and Chattels, Moneys and Effects of Samuel Forrest, Deceased, and Charles Borcherling, Receiver, Complainants.	Decree upon Remittitur.

Upon opening the matter this day to the court by Courtlandt Parker, of counsel for the said complainants, and it appearing that the said parties above named as defendants filed their appeal from the decree made in this cause adjudging that the pleas of the said appellants, defendants below, should be and the same were thereby overruled, with costs, and that the said defendants in this court should answer the bill of complaint in this cause within thirty days

from the service of a copy of said order upon their solicitors therein; from which said order the said defendants made their appeal to the said court of errors and appeals, in which appeal said complainant duly joined and the matter arising thereon having been duly argued by counsel for the above-named defendants, appellants in said court of errors and appeals, and counsel for said complainants in this court, appellees, or respondents in said court of errors and appeals,

22½ and the said appeal having been determined by the said court of errors and appeals, and the proceedings having been remitted to this court to proceed further thereon according to law, and on reading the remittitur from the said court of errors and appeals whereby it appears that the said court being of opinion that the pleas of the said appellants, defendants in the court below, and therein filed in this cause, were not valid in law for that the act for the relief of Rodman M. Price, passed by the Congress of the United States and approved by the President on the twenty-fourth day of February, eighteen hundred and ninety-one, and set forth in said pleas, and each of them, did not entitle the said defendants in this court, appellants in said court of errors and appeals, though being and claiming as his heirs-at-law, to the payment unto them of the said sum of money mentioned in the said bill of complaint and in said pleas, actually remaining unpaid by the Treasurer of the United States to the said Rodman M. Price at his death, but that said moneys so remaining unpaid are payable to the said Charles Borcherling, receiver in the lifetime of said Rodman Price, deceased, as stated in said bill of complaint, of the property and things in action belonging or due to or held in trust for said Rodman M. Price at the date of said order appointing said Borcherling receiver, mentioned and at the previous times therein mentioned.

And it further appearing that on the second day of March, eighteen hundred and ninety-six, as yet of the term of November of said court of appeals, it was ordered and decreed by said court that the order of this court from which appeal was taken should be and the same was thereby in all things affirmed, and that the record and proceedings in this cause should be and the same *was* thereby ordered to be remitted to the said court of chancery, with directions to proceed therein according to law, with costs to be paid by the said defendants in this court to the said complainants.

22¾ It is thereupon on this nineteenth day of June, one thousand eight hundred and ninety-six, on motion as aforesaid.

Ordered, that the said decree of the said court of errors and appeals be and the same is hereby made the decree of this court.

And it is further ordered that an execution issue out of this court for the said costs according to the practice of this court.

ALEX. T. McGILL, *C.*

23 In Chancery of New Jersey.

Between—

ANNA M. FORREST, Administratrix of Samuel Forrest, Deceased, *et als.*, Complainants,
and
RODMAN M. PRICE and Others, Defendants.

The joint and several answer of Madeline Price, Governeur Price, Francis Price, Rodman M. Price and E. Trenchard Price to the bill of complaint, in the nature of a bill of revivor, of Anna M. Forrest, administratrix of Samuel Forrest, deceased, and Charles Borcherling, receiver, appointed by this court in a case in this court wherein the said Anna M. Forrest was complainant and Rodman M. Price, now deceased, and his wife, Matilda Price, were defendants.

These defendants, respectively, for answer unto the complainants' bill of complaint, or unto so much thereof as they are advised it is material or necessary for them to make answer unto, answering, say:

24 I.

That the said Madeline Price, Governeur Price, Francis Price, Rodman M. Price and E. Trenchard Price, are the only children and next of kin and heirs of the said Rodman M. Price, deceased.

II.

These defendants admit the filing of the original bill of complaint, and the answer thereto; the petition in that cause; the issuing of the order to show cause, founded on the petition; the appointment of said Borcherling as receiver; his giving bond, and the restraning order therein mentioned, as alleged in the bill of complaint.

These defendants have no knowledge whether the said Rodman M. Price, deceased, received the moneys alleged in the bill to have been drawn by him from the Assistant Treasurer of the United States, but are informed, and believe, that moneys, to the amount therein mentioned, were drawn, but whether received by said Price or not, they do not know; but they allege that none of these moneys was received by these defendants, or any of them, either during the lifetime of said Rodman M. Price, or since his death.

They also admit that said Price did not comply with the demands of said order, by delivering over any drafts or money to the said receiver, and that proceedings were taken against him in the court of chancery, for contempt of court, in not obeying said order, and that judgment of contempt was entered therein, and that the said Rodman M. Price was very ill at the time said order was made, and that he, afterwards, died, at the date named in the bill of complaint, without such order having been executed.

They also admit that no will of the said Rodman M. Price has

been presented to any probate court, and say that no will
25 was left by him, so far as they know or have any reason to believe; and also that no letters of administration have been issued upon his estate, and they say that he left no estate, so far as they know or have any reason to believe; and that nothing has ever come to them, and that no property, either real or personal, has ever come to them, or any of them, from his estate, and there is no property, of his estate to come to them, of which they are aware.

Your orators admit that the complainants are without remedy for the recovery of the money alleged by them to be due from the said Rodman M. Price, if there be any such money due, and deny that they can, by any proceeding in this court, sequester the moneys in the Treasury of the United States, mentioned in the bill of complaint, for the reasons hereinafter stated.

As to what is the disposition of the Treasury Department of the United States, or whether demand has been made upon the officers of that department, as alleged in the bill of complaint, these defendants have no knowledge.

These defendants admit that after the death of the said Rodman M. Price, they executed a power of attorney to the said John C. Fay, of Washington city, a counsellor-at-law, for the purpose of collecting for them the moneys in the Treasury of the United States, and mentioned in the bill of complaint, and assert that they were, by law, entitled so to do, and charge that they are now entitled to receive from the United States Treasury the moneys therein remaining, which are parcel of the moneys awarded by the act of Congress, set forth in the bill of complaint, and allege that at the death of the said Rodman M. Price these defendants became entitled, under the act of Congress, set forth in the bill of complaint, and hereinafter referred to, to all the moneys then remaining in the Treasury of
the United States, as original takers; and, further, they are
26 advised, and charge, that there is no jurisdiction in this court to sequester the moneys remaining in the Treasury of the United States, and awarded under said act, and that the only persons to whom the same can legally be paid are those of these defendants last named, or such persons as may hold an assignment thereof, freely made by these defendants, in accordance with, and having all the formalities required by the laws of the United States.

And these defendants deny that the appointment of said receiver, and the order appointing him, worked a legal assignment by the said Rodman M. Price, deceased, to the complainant Borcherling, or conveyed to him any of the rights of any of the takers under said act of Congress.

These defendants admit that it was contended, as alleged in the bill of complaint, on the argument of the original cause, that under a proper construction of said act of Congress, the said moneys, in the case of the death of said Rodman M. Price, now deceased, passed to his children as original takers, under the description of heirs-at-law contained in said act; and they respectfully charge that that

contention was correct, and should have been adopted by the court in that proceeding.

With reference to the allegation that the action of the court and the orders thereof, in the original cause, were made known to these defendants, these defendants deny that allegation, as made, and say that while they had knowledge of the proceedings in a general way, that they did not have specific knowledge with reference thereto, nor what orders were being made, nor anything other than a general knowledge that a suit was being prosecuted against their father to recover these moneys, and that their action after his death was taken by reason of their belief in their rights as original takers under the said act of Congress, and for the purpose of recover-
27 ing that which, by law, they were advised and now charge, was their right.

They respectfully deny that their action was, as alleged in the bill, in disobedience of the orders of this court, but, on the contrary, say that they were not advised of said original suit, were not served with any process or papers in the case, and were not, except in a general way, advised of its existence; and they deny that the said order to convey to the said Borcherling was binding upon them, or in anywise concluded their rights in the matter, and deny that their action in the matter was any contempt of this court, or that they were under any obligations to apply to this court in reference to these moneys.

And these defendants, further answering, say, that the facts of the case are as follows:

That Rodman M. Price, late of Bergen county in the State of New Jersey, departed this life on the seventh day of June, eighteen hundred and ninety-four, intestate, leaving him surviving Matilda C. S. Price, his widow, and these defendants, Francis Price, Madeline Price, Rodman M. Price, Governeur Price and E. Trenchard Price, his heirs-at-law; that the said Rodman M. Price, deceased, was not seized at the time of his death of any messuages, lands, tenements, or hereditaments in the State of New Jersey or elsewhere, and that no messuages, lands, tenements or hereditaments descended to these defendants or either of them from their said father; neither were any lands, tenements or hereditaments devised by the said Rodman M. Price, deceased, to these defendants, or either of them; and further, neither these defendants, or either of them have any knowledge, information or belief as to the personal estate of the said deceased, except that the said Rodman M. Price, deceased, had at his death, no personal estate or property whatever, as they
28 believe, and that neither of these defendants has had or hath the possession, ownership or control of any personal estate whatever from their said father or any knowledge of the existence anywhere of any such estate; neither have these defendants or either of them, received any moneys *for* the Government of the United States, either through their father, Rodman M. Price, or otherwise, under or by virtue of the act of Congress referred to in said bill of complaint, which act was approved by the President, February

twenty-third, eighteen hundred and ninety-one, and of which the following is a copy:

"*An Act for the Relief of Rodman M. Price.*"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury of the United States be and he is hereby, authorized and directed to adjust upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting navy agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January fourteenth, eighteen hundred and fifty, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment.

"Approved February 23, 1891."

But as to all moneys not actually received by the said Rodman M. Price, deceased, in his lifetime, from the Government of the United States upon the adjustment under said act, whether it be the sum of twenty-three thousand dollars mentioned in the said bill, or any other sum greater or less, actually remaining unpaid to the said Rodman M. Price at his death, these defendants, heirs of the said Rodman M. Price, deceased, referred to in said act, are entitled to thereunder by special designation in the said act, as his
29 heirs, and the said moneys so remaining unpaid are in no way chargeable with the debts and liabilities of the said Rodman M. Price, deceased, or to any of his creditors, and that all such moneys so unpaid to the said Rodman M. Price, in his lifetime, are payable by the Government of the United States directly and exclusively to these defendants, out of any money in the Treasury and not otherwise appropriated and for the benefit of the said heirs respectively, without any claim whatsoever upon the same by the complainant. The balance unpaid as aforesaid to the said Rodman M. Price in his lifetime, and to which these defendants are entitled as aforesaid, which balance these defendants say and believe, is about twenty-three thousand dollars, is a part of the sum referred to in said act as paid over to and receipted for by A. M. Van Nostrand, acting purser, January 14, 1850.

That on or about the sixth day of December, eighteen hundred and forty-eight, in the early settlement and development of California, the said Rodman M. Price, deceased, was assigned to duty upon the Pacific coast at California as purser and fiscal agent of the Government of the United States for the Navy Department of the United States, he then being a purser in the United States Navy, and acted as such up to about December, eighteen hundred and forty-nine, or January, eighteen hundred and fifty, when he was detached by the Government of the United States from such duty and ordered to transfer all public money and public property remaining in his hands to his successor, or to such other disbursing officer of the navy as might be designated by the commanding

naval officer of the naval station at California, and immediately after such transfer to report to the city of Washington for the purpose of settling his accounts. Afterwards, in the month of December, eighteen hundred and forty-nine, A. M. Van Nostrand, referred to in the said act of Congress, became the successor of the
30 said Rodman M. Price, deceased, in California, aforesaid, as acting purser in the Navy of the United States. Afterwards, on or about the thirty-first day of December, eighteen hundred and forty-nine, Commodore Jones of the United States Navy, commanding the United States squadron at San Francisco, California, on behalf of the Government of the United States, directed Acting Purser Van Nostrand, aforesaid, to call on Purser R. M. Price, aforesaid, and to receive from him all books, papers, office furniture, and funds on hand belonging to the purser's department at San Francisco. In accordance therewith and with the instructions aforesaid to the said Purser Price, he paid over on the thirty-first day of December, eighteen hundred and forty-nine, to the said Van Nostrand, acting purser of the United States Navy at the San Francisco station in California, the sum of forty-five thousand dollars, being all the public moneys of the United States in the hands of the said Purser Price. Afterwards, on the fourteenth day of January, eighteen hundred and fifty, the said Rodman M. Price, out of his private moneys alone and not of the Government of the United States, advanced to the said Van Nostrand, seventy-five thousand dollars, and took his receipt thereof as follows:

"SAN FRANCISCO, *January 14th*, 1850.

"Received from Rodman M. Price, purser, U. S. Navy, seventy-five thousand dollars for which I hold myself responsible to the United States Treasury Department, $75,000. (Duplicate.)

"A. M. VAN NOSTRAND,
"*Acting Purser.*"

Which advance was without the approval and signature of Commodore Jones, the commanding officer of the said Acting Purser A. M. Van Nostrand, although the said Rodman M. Price regarded the advance as an accommodation to the Government of the
31 United States at that time being in the early history of California.

Previous to the approval of the act of Congress aforesaid, and the adjustment of the accounts therein referred to, the Government of the United States had always declined upon request made by the said Rodman M. Price, deceased, to repay or reimburse him for the said sum of seventy-five thousand dollars, or any part thereof. The said A. M. Van Nostrand never returned or paid the said money, or any part thereof, to the said Rodman M. Price; neither did he account for the sum to the Government of the United States. Previous to the twelfth day of March, eighteen hundred and fifty-four, the Honorable Caleb Cushing, then Attorney General of the United States, and acting as such, in obedience to the request of the Honorable James C. Dobbin, then Secretary of the Navy of the United

States, investigated the claim of the said Rodman M. Price, deceased, against the Government of the United States for the reimbursement or payment to him of the said seventy-five thousand dollars by the Government aforesaid, and gave an opinion that the Government of the United States was not responsible for, and could not be charged with, the private funds paid by Rodman M. Price aforesaid to the said Van Nostrand, and without the written approval of the said comanding officer, Commodore Jones. A copy of which opinion in full is annexed to this answer making part thereof, and to which reference is made for all the facts therein stated, and for the matters of law and otherwise therein contained.

Previous to the giving of the opinion aforesaid the said Rodman M. Price, deceased, had frequently claimed of the Government of the United States the payment of the said seventy-five thousand dollars, but the said Government had always declined to pay the same; after the giving of the said opinion the Government
32 of the United States continued to decline to pay the same, up to the time of the approval of the said act of Congress and the adjustment of the accounts therein referred to, always denying and disputing the liability of the said Government to pay the same. And these defendants say that the said claim was not a lawful claim against the Government of the United States for which it was lawfully liable; but in view of the fact that the money had been paid or advanced by the said Rodman M. Price, deceased, as aforesaid, in the belief that it would be an accom-odation to the said Government in the condition of things that existed in the early history of California at that time, and in view of the fact that the said Rodman M. Price had become old, and had been in the service of the Government of the United States as a purser in the navy for many years, and also governor of the State of New Jersey, and that it was equitable and just, apart from the question of the lawfulness of the claim, that he or his heirs mentioned in the said act of Congress should be paid the said sum of seventy-five thousand dollars, the said act of Congress was accordingly passed.

In accordance with said act the Secretary of the Treasury of the United States, in or about the month of August, eighteen hundred and ninety-two, adjusted the accounts of the said Rodman M. Price, late purser in the United States Navy and acting agent at San Francisco, California, crediting him with the said sum of seventy-five thousand dollars, paid over to as aforesaid and receipted for by his successor, A. M. Van Nostrand, acting purser, January 14th, 1850, leaving the sum of seventy-six thousand, two hundred and four dollars, and eight cents found due him; the said Rodman M. Price, deceased, upon such adjustment, according to the intent and meaning of the said act, which sum includes the whole of the said seventy-five thousand dollars as a part thereof, of which these defend-
ants admit the said Rodman M. Price, deceased, in his life-
33–46 time, actually received four drafts from the Government of the United States, and the money therefor, amounting to forty-five thousand, two hundred and four dollars and eight cents, and that the balance thereof, which is part of the said seventy-five

thousand dollars, after deducting any other sum actually paid to the said Rodman M. Price, thereon in his lifetime by the Government of the United States, these defendants, being the heirs of the said deceased, are entitled to as aforesaid, under and by virtue of the said act of Congress and adjustment aforesaid.

Wherefore, these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

McGEE, BEDLE & BEDLE,
Solicitors for and of Counsel with Defendants.

* * * * * * *

(Opinion of Attorney General Cushing omitted here in printing. See side page 22*h*.)

47 In Chancery of New Jersey.

Between—

ANNA M. FOREST, Widow and Administratrix of Samuel Forest, Deceased; Charles Borcherling, Receiver, Complainants,
and
RODMAN M. PRICE, FRANCIS PRICE, MADELINE Price, Governeur Price, E. Trenchard Price, and John C. Fay, Defendants.

On Remittitur from the Court of Errors and Appeals in the Last Resort in All Causes.

This cause coming on to be heard on bill and answer at the May term of the year, eighteen hundred and ninety-six, of the court of chancery in the presence of Mr. Cortlandt Parker of counsel with the complainants and Mr. Flavel McGee of counsel with the defendants, and the pleadings having been read, and the court being of opinion that the complainants are entitled to the relief prayed in so far as it relates to the collection by the defendants of the moneys mentioned in the bill of complaint and still in the Treasury of the United States. It is now ordered and decreed, that the said defendants and each of them be and they hereby are perpetually enjoined and restrained from making any demand upon, or application to the Government of the United States, or the Secretary of the Treasury of the United States or any officer of the said Treasury, or from receiving from the United States, or its said Secretary of the Treasury or any officer thereof, any part of the money remaining in the Treasury of
48 the United States at the time of filing said bill of complaint, and which was awarded to Rodman M. Price, deceased, as in the said bill stated, or now there remaining; and that the defendants likewise pay to the complainants or their solicitors, their costs to be taxed in this cause.

Dated the twenty-fifth day of June, one thousand eight hundred and ninety-six.

ALEX. T. McGILL, *C.*

On motion of—
CORTLANDT & WAYNE PARKER,
Solicitors of said Complainants.

Filed August 30, 1896.

49 In Chancery of New Jersey.

Between—

ANNA M. FORREST, Widow and Administratrix, etc., and Charles Borcherling, Receiver, etc., Complainants,
and
RODMAN M. PRICE and Others, Defendants.

On Bill, etc. Notice of Appeal.

The defendants hereby appeal from the final decree of the chancellor made in this cause and from every part thereof, to the court of errors and appeals in the last resort in all causes.

Dated November 2nd, 1896.

McGEE, BEDLE & BEDLE,
Solicitors of Defendants.

I conceive that there is good cause for appeal in the above-stated cause.

FLAVEL McGEE,
Of Counsel with the Defendants.

50 Court of Errors and Appeals in the Last Resort in All Causes.

RODMAN M. PRICE and Others, Appellants,
and
ANNA M. FORREST, Widow and Administratrix, &c., and CHARLES Borcherling, Receiver, &c., Appellees.

To the honorable the court of errors and appeals in the last resort in all causes:

The petition of Rodman M. Price, Francis Price, Madeline Price, Governeur Price and E. Trenchard Price, the appellants in the above stated cause, respectfully shows:

That your petitioners find themselves aggrieved by a final decree made in the court of chancery by his honor Alexander T. McGill, chancellor of New Jersey, bearing date the twenty-fifth day of June, in the year eighteen hundred and ninety-six, wherein the said Anna M. Forrest, widow and administratrix of Samuel Forrest, deceased, and Charles Borcherling, receiver, were complainants, and Rodman M. Price, Francis Price, Madeline Price, Governeur Price, E. Trenchard Price and John C. Fay, were defendants in this respect, to wit, that the said decree orders and decrees that the defendants and each of them be and they thereby were perpetually enjoined and restrained from making any demand upon, or application to,
51 the Government of the United States, or the Secretary of the Treasury of the United States, or any officer of the said Treasury, or from receiving from the United States, or its said Secretary of the Treasury, or any officer thereof, any part of the money remaining in the Treasury of the United States at the time of the filing of the said bill of complaint, and which was awarded to Rodman M. Price, deceased, as in said bill stated, and now there re-

maining; and that the said defendants likewise pay to the complainants or their solicitors, their costs to be taxed in said cause.

And your petitioners humbly appeal from the whole and every part of the said decree of the chancellor which decrees as aforesaid, on the ground that the same is erroneous, for that the said chancellor should have decreed that the said bill of complaint be dismissed with costs.

Your petitioners therefore pray that the said decree of the said chancellor may be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

McGEE, BEDLE & BEDLE,
Solicitors for and of Counsel with the Petitioners.

Endorsed: Service of a copy hereof is acknowledged Nov. 13, 1896. Cortlandt & Wayne Parker, att'ys & sol'rs — appellees. Filed November 19, 1896. Henry C. Kelsey, clerk.

52 Court of Errors and Appeals in the Last Resort in All Causes.

RODMAN M. PRICE ET ALS., Appellants,
and
ANNA M. FORREST, Widow and Administratrix, etc., and CHARLES Borcherling, Receiver, Appellees, Respondents,

The Answer of the Above-named Respondents to the Petition of Appeal of the Above-named Appellants.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto nevertheless, say and admit that a decree was on the twenty-fifth day of June, eighteen hundred and ninety-six, made and entered in the court of chancery in the cause for that purpose mentioned in the said petition as is therein stated, but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity and they pray that the same may be affirmed with costs to be adjudged to these respondents.

CORTLANDT — WAYNE PARKER.

Endorsed: Filed Nov. 19th, 1897. Henry C. Kelsey, clerk.

53 STATE OF NEW JERSEY:

Court of Errors and Appeals, Nov. Term, 1896.

In case of—

RODMAN M. PRICE and ANNA M. FORREST. } On Appeal.

No. 64 of Nov. Term, 1896.

Date 11 Jan'y, 1897.

David A. Depue, presiding.

Opinion by Judge Lippincott.

Check list.	Affirm.	Rever'l.
The chancellor		
" chief justice		
Mr. Justice Depue	1	
" " Dixon		
" " Garrison	1	
" " Gummere	1	
" " Lippincott	1	
" " Ludlow	1	
" " Magie	1	
" " Van Syckel	1	
Judge Barkalow	1	
" Bogert	1	
" Dayton	1	
" Hendrickson	1	
" Krueger	1	
" Nixon	1	
Totals	13	

DAVID A. DEPUE.

Filed Jan. 11, 1897.
HENRY C. KELSEY, *Clerk.*

54 New Jersey Court of Errors and Appeals, March Term, 1896.

Between—

RODMAN M. PRICE ET ALS., Appellants,
and
ANN M. FORREST, Administratrix of Samuel Forrest, Deceased, *et al.*, Respondents.

1. A statute of the United States which authorizes and directs the Secretary of the Treasury of the United States to adjust the accounts of a former purser in the Navy upon principles of equity and justice and credit him with a sum of money paid over to and receipted for by his successor in office, although such payment was without governmental authority, and directing the payment of the sum that may be found due him upon such adjustment to him, "or his heirs," is not a statute which bestows a mere gratuity or bounty, but it is the restitution of property which once belonged to him as assets for the liquidation of his pecuniary obligations, and upon its restoration it cannot be held to have assumed any new character. The words "or his heirs" are simply words of succession and descriptive of his estate in the money found to be due him and used in the statute in the sense of personal representatives and intended to secure the moneys to his estate in the event of his death before they were paid.

2. The assignment of a claim against the United States ordered by the court of chancery to be made by a debtor or his rep-
55 resentatives, if he be deceased, to a receiver in aid of proceedings in said court by a creditor in said court to obtain satisfaction of a judgment at law recovered against the debtor is not prohibited by and is not a nullity under the provisions of section 3477 of the Revised Statutes of the United States.

3. Such an assignment to the receiver and assignments to him by operation of law in such proceedings by virtue of his appointment as receiver vesting in him under the powers with which he is clothed the right to take, receive, sue for, and distribute according to law; and the orders of the court from which he derives his appointment is an exception to the provisions of section 34 of the Revised Statutes of the United States requiring assignments of such claims or powers of attorneys to receive the same, to be acknowledged by the persons executing them and to be certified by the officer taking such acknowledgments.

4. The objects of section 3477 of the Revised Statutes of the United States are that the Government may not be harassed by multiplying the number of persons with whom it has to deal, and that it might always know with whom it was dealing until a contract is completed and an adjustment and settlement was made; and none of these evils can happen upon an assignment for the benefit of the creditors of a claimant, either expressly ordered to be made by a court having jurisdiction or resulting by operation of law.

56 5. The court of chancery has jurisdiction to determine the right of the distribution of such claim in payment and sat-

isfaction of a judgment debt due from the claimant to his creditors whenever the proper parties are before the court and the point decided be within the issue made by the pleadings.

On appeal from the order of the chancellor overruling the pleas of the appellants.

The bill of complaint in this case is filed by Anna M. Forrest, administratrix of Samuel Forrest, deceased, and Charles Borcherling, receiver of the goods and chattels, rights, credits, and property and effects of Rodman M. Price, deceased, against Rodman M. Price and others, the children of the said Rodman M. Price, deceased, as defendants. To this bill of complaint two joint and several pleas have been filed, alike in form and substance, setting up in each precisely the same defense to this suit in equity.

This bill of complaint was filed July 5th, 1894.

It states that it is filed by permission of the court as a bill of revivor and original bill, in the nature of a supplement to a bill which was filed on the 30th day of May, 1874, by the complainant against Rodman M. Price, of Bergen county, in the State of New Jersey, now deceased, jointly with his wife, Matilda C. S. Price, and Francis Price. It is alleged that by such former bill of complaint it was set forth that on the second day of June, A. D. 1857, in the supreme court of New Jersey, the said Samuel Forrest in his
57 lifetime recovered a judgment against Rodman M. Price, now deceased, for the sum of $17,000 debt and $78.04 costs of action, and that upon said judgment a *fieri facias* was sued out and returned unpaid and unsatisfied; that on November 7th, 1860, the said Forrest died intestate, with the said judgment still remaining unpaid and unsatisfied; that on about January 2nd, 1874, administration of the goods and chattels, rights and credits, which were of the said Forrest, deceased, was granted to the said Anna M. Forrest by the ordinary of the State of New Jersey; that shortly afterwards said judgment was revived by a writ of *scira facias*, and that on or about April 14th, 1874, another writ of *fieri facias* was duly and regularly issued upon said revived judgment, which also was returned unpaid and unsatisfied, and that thereupon the former bill of complaint by said Anna M. Forrest as administratrix aforesaid was filed, alleging that the said Rodman M. Price, since deceased, was possessed of certain moneys, property, and things in action, either in his own possession or held in trust for him by the other defendants, and praying for the appointment of a receiver of such property and things in action, and that the same be appropriated to the payment of the judgment aforesaid and costs thereof therein set forth, with the appropriate prayer for injunction and process.

The bill of complaint in this case further states that on or about December 4th, 1874, the defendants in said former bill filed their answer thereto, in which the recovery and force of the judg-
58 ment against Rodman M. Price at the suit of said Forrest was admitted, but denying circumstantially that the said Rodman M. Price was possessed of any of the property as claimed in

such bill of complaint, or that any property whatever was held by him or in trust for him by the other defendants, and charging that the said Price had no title to or interest in any of the property then standing in the names of the other defendants. The bill further states that after the filing of this answer the cause slept until August 9th, 1892, when the said Anna M. Forrest, administratrix aforesaid and one of the complainants in this cause, filed a petition supplementary to the bill, reciting that several writs of *fieri facias de bonis et terris* had been issued upon the judgment aforesaid, all of which had been returned unsatisfied for want of any goods or lands whereon to make a levy out of which to make the debt and costs. By this petition, as it appears by the bill of complaint, it was charged that the sum of forty-five thousand dollars was about to be paid to the said Price by the officers of the Treasury of the United States, being the sum found to be due him by an accounting between the said Price and the Government of the United States, and that such sum was to be paid by the delivery to Price or his attorney of a draft of the Treasurer of the United States or some other negotiable surety made and issued by the financial officers of the Government of the United States, payable to the order of said Price, and that said draft or other negotiable security was to be made and the transaction closed upon the fifteenth of the then month of
59 August. By this petition it was charged that said Price, if he received such money, would put the same beyond the reach, and that the same would not be available to satisfy said judgment, and she therefore prayed that an injunction might issue to prevent said Price from endorsing such drafts to any one but the complainant in payment of said judgment, and that a receiver of such fund or draft or negotiable security be appointed, and that said Price be directed immediately upon the receipt of the same by him to endorse the same to said receiver, to the end that the amount thereof might be received by such receiver as an officer of the court of chancery, to be disposed of accordingly to law and the direction of that court. The bill further recites that upon such petition being filed on August 8th, 1892, an order to show cause on that day was made why the prayer of the petition should not be granted, and why an injunction should not issue and a receiver be appointed according to the tenor of the prayer of said petition, and further directed that the said Price be restrained and enjoined from making any endorsement of any such draft, drafts, or other negotiable security of the United States, as was set forth in said petition. This order was made returnable on September 12th, 1892.

The bill of revivor further states that a certified copy of such order under the seal of the court of chancery was served on August 10th, 1892, on the said Price; yet on the fifth day of September, 1892, he received from the Assistant Treasurer of the United States
60 four several drafts—one for the sum of $2,704.08, one for $13,500, one for $20,000, and a fourth for $9,000—and that on different dates between the date of the reception by him of the drafts and the third day of October, 1892, he endorsed such drafts, and collected the proceeds thereof, and devoted the same to his own

use, and that on the third day of October he filed an answer to the petition, which, without admitting the endorsement of said drafts, alleged that the judgment of Forrest against him had been paid, and, further, that there was a sum of money due him from the United States, voted to him or his heirs by Congress, and that about $45,000 of it was paid or about to be paid, but that even if the said judgment was still unpaid and valid against him, yet this sum of money so voted to him was not amenable to the payment of such judgment, and could not be lawfully paid to any receiver or otherwise appropriated to that purpose.

The bill further alleges that such proceedings were had upon the former bill and the petition aforesaid that after the hearing on said rule to show cause, on October 10th, 1892, Charles Borcherling was duly appointed receiver of the property and things in action belonging to or due to or held in trust for said Price at the time of the issuing of the executions on such judgment or at any time afterwards, and especially of the four drafts aforesaid, with authority to the receiver to possess, receive, and in his own name to sue for such property and things in action and to hold such drafts subject to the further order of the court; that such receiver was required to give bonds in the sum of $40,000 for the faithful performance of
61 his duties, and that in and by said order the said Price was enjoined and restrained from intermeddling with said receiver in regard to said drafts and to put the same in the possession of the receiver if the same were in the possession of said Price or under his control, provided that if said drafts, excepting the one for $13,500, should be delivered with the endorsement of said Price to the clerk of the court of chancery on or before October 13th, then the order should be void. He was also enjoined and restrained from any endorsement or appropriation of said drafts otherwise than to said receiver or to the clerk as aforesaid. The receiver gave the bond required and filed his official oath and entered upon his duties. The drafts were not so delivered by Price, whereby the order remained in full force. This order was served upon Price with a written demand that if the drafts or either of them were not in his physical possession, but were held by him or subject to his control, whether alone or jointly with any other person, that he give his consent and order in writing for their delivery to the receiver or to his order, and that he do all things necessary within his power to put the receiver in possession and control thereof. The copy of the order and the demand was served upon Price shortly after the order was made, elsewhere than in the State of New Jersey, which was the place of his abode and residence, for the reason that he was not to be found within that State until July 22nd, 1893, when it was served upon him again. On the — day of ——, 1892, an attachment was issued against Price for
62 contempt of court in disobeying the order of August 8th, 1892, and after due proceedings he was convicted of such contempt, and by order dated May 18th, 1893, he was ordered to pay to the receiver the sum of over $30,000 of this fund aforesaid,

together with a small fine, and that upon failure to comply with such order that he be imprisoned until said order was performed.

The bill further alleges that the amount of such drafts *were* a part of a certain debt of $76,000 or thereabouts awarded to the said Rodman M. Price by the officers of the Treasury Department of the United States under an act of Congress passed February 23rd, 1891, and agreed to be paid to him in conformity with the directions contained in such act, and that the balance of said $76,000, after the drafts were delivered to Price, was to be retained to answer a counterclaim of the United States for a debt alleged to be due by Price to the United States, but after investigation such determination to retain such balance was reconsidered, and that the Treasury Department were about to pay unto the said Price the sum of $31,000, the balance of said fund, and that said Price and his agents were actively seeking to obtain payment of the same, and that pending the proceedings to compel the said Price to consent that the Treasurer of the United States pay to said receiver such balance the said Price, on the eighth day of June, 1894, departed this life intestate, and that no letters of administration have ever been granted to any one upon his estate.

63 The bill further alleges a further payment of $9,000 was made out of said fund to said Price, thus reducing the balance of said fund apparent on the books of the Treasury Department of the United States to the sum of about $22,000, and that demand had been made by the receiver upon the Treasurer of the United States for the payment to him of said balance; that the Treasurer neither consents or refuses to make such payment, but is willing to abide the determination of some lawful tribunal of the rights of the receiver in the premises, and is willing to pay over the balance of such fund in accordance with such determination, and it is believed by the complainants that on the decree of the court of chancery being made that the receiver is entitled to said balance, and notice thereof duly given, that the Treasury Department will respect such decree and pay over to the receiver the balance of said fund.

The bill further alleges that the children of said Price, as his heirs-at-law, are endeavoring, upon their construction of the provisions of the act of 1891, to obtain the payment of this balance to them personally, on the ground that under the act of Congress awarding this amount to Price or "his heirs" the money belongs to them as his heirs-at-law and not as representatives of his estate, and that the receiver has no right in law thereto, and that they have authorized John C. Fay, of Washington city, by power of attorney to apply for and receive such balance in their behalf, and that they are now pressing their claim, as aforesaid, with the Secretary of the Treasury for such payment.

64 Administration *ad prosequendum* of the estate of Price has been granted to Allan L. McDermott, the clerk of the court of chancery, who is joined as a defendant simply for the purpose of this suit, to subject this fund to the payment of the debts of the intestate.

Prayer is made that injunction issue against the defendants receiving any moneys of the officers of the Treasury of the United States; that the defendants be decreed to pay to the receiver any part of said money which they respectively have received or hereafter may receive.

The defendants have not answered this bill, but have filed two pleas thereto, one the joint and several plea of Madeline Price and Governuer Price, children of Rodman M. Price, deceased; the other is the joint and several plea of Francis Price, Rodman M. Price, and Trenchard Price and Matilda Price, other children of Rodman M. Price, deceased. These pleas are alike in form and substance. The act of Congress approved February 23, 1891, is set out, and under it these defendants, as they heirs-at-law of Rodman M. Price, deceased, contend that they are entitled to the balance of this fund.

The facts set out by the defendants in these pleas are substantially that the said Rodman M. Price had no real or personal estate or property at the time of his death, and that they have not had nor do they now have the possession, ownership, or control of any personal estate from their said father, and that they have not received any moneys from the Government of the United States
65 through their said father or otherwise under the act of Congress of February 23, 1891.

The pleas set out the act of Congress as follows, to wit:

"An act for the relief of Rodman M. Price."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury of the United States be, and he is hereby, authorized and directed to adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy and acting navy agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January fourteenth, eighteen hundred and fifty, and pay to said Rodman M. Price or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due to him upon such adjustment. Approved February 23, 1891."

The pleas further set forth that on or about the sixth day of December, 1848, in the early settlement and development of California the said Rodman M. Price, deceased, was assigned to duty upon the Pacific coast, at California, as purser and fiscal agent of the Government of the United States, for the Navy Department of the United States, he then being a purser in the United States Navy and acting as such up to about December, 1849, or January, 1850, when he was detached by the Government of the United States from such duty and ordered to transfer all public money and
66 public property remaining in his hands to his successor or to such other disbursing officer of the navy as might be designated by the commanding naval officer of the naval station of California, and immediately after transfer to report to the city of Wash-

ington for the purpose of settling his accounts. Afterwards, in the month of December, 1849, A. M. Van Nostrand, referred to in the said act of Congress, became the successor of the said Rodman M. Price, deceased, in California aforesaid, as acting purser in the navy of the United States. Afterwards, on or about the 31st day of December, 1849, Commodore Jones, of the United States Navy, commanding the United States squadron at San Francisco, California, on behalf of the Government of the United States directed Acting Purser Van Nostrand aforesaid to call on Purser R. M. Price aforesaid and receive from him all books, papers, office furniture, and funds, and anything belonging to the purser's department at San Francisco. In accordance therewith and with the instruction aforesaid to the said Purser Price, he paid over on the 31st day of December, 1849, to the said Van Nostrand, acting purser of the United States Navy, at San Francisco station, in California, the sum of $15,000, being all the public moneys of the United States in the hands of said Purser Price. Afterwards, on the 14th day of January, 1850, the said Rodman M. Price, out of his private moneys alone and not of the Government of the United States, advanced to the said Van Nostrand $75,000, and took his receipt therefor as follows:

"SAN FRANCISCO, *January* 14, 1850.

67 "Received from Rodman M. Price, purser, U. S. Navy, $75,000, for which I hold myself responsible to the United States Treasury Department. $75.000.00. (Duplicate.)

"A. M. VAN NOSTRAND,
"*Acting Purser.*"

Which advance was without the approval and signature of said Commodore Jones, commanding officer of the said Acting Purser A. M. Van Nostrand, although the said Rodman M. Price regarded the advance as an accommodation to and made for the benefit of the Government of the United States, to be used by the said Van Nostrand, as acting purser of the United States Navy, for the payment of the expenses of the navy at that station. The pleas fully exhibit the difficulties and embarrassments of the United States in obtaining funds for these purposes on the Pacific coast at this period of the history of California. The said A. M. Van Nostrand never returned or paid the said sum of money or any part thereof to the said Rodman M. Price, neither did he account for this sum to the Government of the United States.

In the settlement of the accounts of the said Rodman M. Price he made claim on the Treasury Department for a credit or allowance for the said sum of $75,000, and has continued ever since to make such claim. In the year 1854 the then Attorney General of the United States, acting under instructions from the Secretary of the Navy to investigate the claim of said Rodman M. Price for the reimbursement or payment to him of said $75,000, gave an opinion that the Government of the United States was not responsible for and could not be charged with the private fund paid by Rodman M.

Price aforesaid to the said Van Nostrand, and which was so
68 paid without the written approval of the said commanding officer, Commodore Jones. Annexed to the pleas is a copy of this opinion, with all other proceedings taken in this matter of the claim of the said Rodman M. Price against the Government of the United States, by which it is shown that the money, said sum of $75,000, was paid and advanced by the said Rodman M. Price in the belief that it would be an accommodation to the said Government in the condition of things that existed in the history of California at that time, and that the same was advanced and paid to his successor in office in good faith for the use of the Government of the United States and the United States Navy, and that apart from the lawfulness of the claim it was one equitable and just to be allowed in the settlement of his accounts. The pleas further allege that in accordance with the said act of Congress the Secretary of the Treasury of the United States in August, 1892, adjusted these accounts of the said Rodman M. Price, as late purser in the United States Navy and acting navy agent in San Francisco, California, in accordance with the act of 1891, and credited him with the said sum of $75,000 paid over as aforesaid and receipted for by his successor, A. M. Van Nostrand, acting purser, January 14, 1850, leaving the sum of $76,204.08 found due him, and admits that he received four drafts from the Government of the United States and the money therefor amounting to $45,204.08, and that the balance thereof of $31,000, which was a part of the said $75,000, after deducting any other sum actually paid to the said Rodman M. Price thereon in his lifetime by the Government of the United States, the defendants in said pleas named claim that they are entitled to payment thereof to them under and by virtue of the said act of Congress and the adjustment aforesaid.

Argument was had before the chancellor on the bill and
69 pleas, and on July 29, 1895, by order of the chancellor the pleas were overruled, with costs, from which order an appeal has been taken to this court.

McGee, Bedle & Bedle, for appellants.

Cortlandt & Wayne Parker, for respondents.

The opinion of the court was delivered by LIPPINCOTT, J.:

The first insistment of the defendants below and appellants in this court is that as heirs-at-law of Rodman M. Price, deceased, they are entitled under the act of Congress of 1891 to the balance of the moneys in the Treasury of the United States, amounting to about $22,000, as admitted by the pleas in this suit; that Congress by this act was bestowing a gratuity and was at liberty to select its beneficiaries, and that in so doing it directed certain specific persons to whom it should go, and that by the directions of this statute, in his lifetime, it was a gratuity to Price, and in case of his death before payment then with the same qualities the gift devolved upon the persons who at the time of his death were his heirs.

The facts set forth in the pleas giving rise to the act of Congress effectually dispose of this insistment, and in the consideration of the pleas the act must be construed to some extent with reference to

those facts, especially so far as there may exist in the statute any reference to them.

70 The facts in these pleas exhibit a great pertinacity on the part of Mr. Price, continuing through a lifetime almost, in pressing his claim for money believed by him to be due from the Government of the United States. They were moneys which indisputably were paid out for the benefit of the United States, so admitted upon all sides and in all proceedings, but which because of the want of the technical approval of his superior officer before the advance was made by him became unallowable in the adjustment and settlement of his accounts with the Government, but the justice of which as a due to him was distinctly recognized in the act of Congress directing its adjustment and payment, either in whole or in part, upon principles of equity and justice.

The act of Congress directs the Secretary of the Treasury "to adjust upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting navy agent at San Francisco, crediting him with the sum paid over to and receipted for by his successor, January 14, 1850, and to pay to said Rodman M. Price or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due to him upon such adjustment."

It was upon these "principles of equity and justice" that the Secretary of the Treasury of the United States adjusted his accounts as an officer of the United States having accounts with the Government.

71 A reading of this statute at once indicates that Congress was not dealing with one upon whom a mere gift for honorable services was to be conferred. It was dealing with a claim of one who had expended his private moneys for the benefit of the Government in an emergency which demanded or justified this expenditure. Under this act, couched in the language in which it is, it cannot, as it seems to me, be contended that the Government of the United States was conferring upon Price a bounty. It was restitution to him of moneys which he had advanced and which he believed at the time the advance was made would be at once repaid in the settlement of his accounts as a disbursing officer of the United States Navy. I think that the act of 1891 was based upon the idea that the claim was a moral and equitable obligation, if not a legal one, on the part of the Government for money to pay him the money "found to be due him" upon an adjustment of his accounts, according to principles of "equity and justice," and not upon any considerations that a gift or gratuity was being conferred upon him.

The learned chancellor, in his opinion in Forrest *vs.* Price, 7 Dick., 16–26, after reviewing the facts in that case, which are precisely the same in substance as those set forth in the pleas herein, so far as Price in his lifetime was concerned, says: "I do not find in this situation even the bounty of a grateful Government partaking of the character of a pension or reward for a meritorious deed, but simply the restitution of property which had once belonged to the defendant as assets for the liquidation of his pecuniary obliga-

tions, and I fail to understand how upon its restoration to
72 the defendant it can be held to assume a new character." In that case this question was elaborately discussed by the chancellor, and his views of the nature of the obligation of the Government of the United States, which was the foundation of this statute, can be fully approved.

So far as the devolution of this money is concerned, upon the facts set up in the pleas and the situation as there expressed, the statute of 1891 cannot well bear any other construction than the one that the payment was intended to benefit the estate of Price and to be within the reach of his creditors. The heirs of Price were in no sense personally intended to be the beneficiaries of the United States by way of gift or gratuity to them as such. The language of the act could only be fulfilled by a payment to Price. If it could be called a gift it occurred at the passage of the act, and the act in no sense intended that the heirs of Price were to be included in the gratuity. But the reason of the act is such as to reveal the intention of Congress to recognize an obligation on the part of the Government, and upon its ascertainment to pay it to Price or his representative in the same manner as a debt is paid to any one. In his accounts with the Government upon such ascertainment he was credited with the amount found to be due. The act in its terms speaks of the application of the principles of equity and justice in the adjustment of his accounts as "late purser of the United States Navy and acting naval agent at San Francisco." The meaning of this statute is
73 to be gathered from the construction of the whole statute, in view of the circumstances which led to its enactment, and the object to be accomplished.

The chancellor, in his opinion in the case in 7 Dickinson, page 16, to which reference has been made, says: "But it affirmatively appears that the money of which the statute authorizes payment, though not a legal claim, is not a pure governmental bounty. The provision in the act for the relief of the defendant Price that payment should be made to him or his heirs has been urged as indicative of the legislative intention that the payment was not intended to benefit creditors. I do not so understand the act. The expression 'or his heirs' was undoubtedly a provision against death before the day of payment, and there can be no substantial doubt that it is used in the sense of personal representatives, the thing dealt with being personalty, and appears in the act to secure the moneys to his estate in the event of his death before they are paid."

The same holding was made by the Comptroller of the United States in his written opinion on this question of date of July 11, 1894, in the determination that the word "or" in the words "or his heirs" should be construed to mean "and." Whilst this is the fair interpretation of this statute, taken as a whole, yet it seems to me to be immaterial whether such meaning be given to the word "or"
on
or not, for it must be that a fair and reasonable construction
74 of this act that its meaning is that the moneys were to be paid to Price in his lifetime, and after his death to his heirs-

at-law, and these words "his heirs" are simply words of succession and description of his estate in the money, and they are in this statute as representatives of his estate only.

Nevison *vs.* Taylor, 3 Halst., 43.
Holcomb *vs.* Lake, 1 Dutch., 605.
S. C., 4 Zab., 688.
Den *vs.* English, 3 Harr., 280.
Den *vs.* Allaire, 20 N. J. Law (Spencer), 19.
Engelfried *vs.* Woelpart, 1 Yeates, p. 41–56.
Winterfield *vs.* Stauss, 24 Wis., 394.

These cases illustrate the construction of the word "or" into "and," to give effect to the fair intention of the legislator. The many cases cited in the American and English Encyclopædia of Law, volume 17, title "or," pages 218 to 222, fully illustrate the instances of this construction.

It will be noticed that in the case of Emerson *vs.* Hall, 13 Peters, 409, which is a case relied on by the defendants, the gift under the statute was by the express terms of the act of Congress payable to the legal representative of Emerson and Lorraine, respectively, and the title of the act was "An act for the relief of Beverly Chew and the heirs of William Emerson, deceased, and the heirs of Edward Lorraine, deceased." 6 U. S. Stat., 464. The body of the act expressly directs that it shall be paid to their "legal representatives." An examination of the case shows that the moneys could never, under the law, be paid to Emerson and Lorraine, and that, as to their heirs, it was a gratuity conferred upon them by Con-
75 gress. The court in that case held that the act evinced a purpose of Congress to make a gift to these heirs; that there was no debt of the Government, and that the act was simply a bounty, and that under statute the money had reached its proper destination when it was withheld from the creditors of Emerson; and this is founded in the fact that the institution by Emerson and Lorraine, as officers of the United States Navy, of the proceedings of condemnation of the slave-trading vessel and the slaves therein captured was one purely voluntary on their part and not at all in the line of their duty towards the Government.

The advance of money by Price was a benefit to the Government and necessary to be made for the expenditures of the United States Navy.

This fund and the part remaining unpaid therefore became a part of the general estate of Price, and thus was liable for his debts, to be distributed according to the laws of the State of New Jersey, the place of his domicile at the time of his death.

Another question has been made as to the jurisdiction of the court of chancery over the parties and the subject-matter involved. The pleas set up the claim of the defendants to this fund in preference to the creditors of Price, and the bill avers and the pleas admit that the defendants are endeavoring to secure payment of this fund to them, and to hinder, delay, and finally obstruct the complainants from recovering the same, to be appropriated to the pay-

ment of the debts of Price. It must be remembered that the
76 suit is not against the United States nor directly against the fund, but it is a proceeding against the parties, and operating upon them, to compel them to an assent to the proper distribution of the fund according to the laws of the domicile of the intestate, and to give effect to the assignment by operation of laws for this purpose to the receiver. The decree of the court cannot operate upon the fund to any greater extent than may be permitted by the authorities of the United States Treasury, but that furnishes no reason, if the proper parties are before the court, why the court should not decide upon the issues raised by the pleadings. Besides, the previous discussion and decision of the merits of this matter fully answers the insistments of the defendants. The defendants have applied to the officials of the Treasury to have this money paid over to them as the heirs of Price. The Comptroller of the Treasury has refused this application and awaits the decision of the court of chancery, which has assumed jurisdiction of the case, as between the defendants and the complainants representing the judgment creditor of Price.

So far as this suit is concerned, as soon as the United States Treasury passed to his credit, in the accounting, the moneys the sum thereof became a debt due to him or a legal obligation in his favor, and which he had the legal right at once to reduce to his possession, which possession he could not deny in a suit against him by the receiver. This money was held by Price without authority to controvert the proposition that in law he had assigned it to the
77 receiver. If the moneys were in private hands instead of in the hands of the Government the receiver could bring suit for it, and neither Price nor his personal representatives could deny that it had been legally assigned to the receiver and had passed to him, and as to the balance of the $23,000 still remaining to his credit in the United States Treasury, it is not the right of the defendants, as his personal representatives, to deny that it has been legally assigned to the receiver. The effect of the statute was to render this money to the estate of Price, and the defendants in suit here set up a distinct claim to it, and the court can treat them as if they were in its possession in order to compel them to assign it to the receiver or to give effect to the assignment to him by operation of law. Harrison *vs.* Maxwell, 15 Vroom, 319; Wilkinson *vs.* Rutherford, 20 Vroom, 245; Williams *vs.* Heard, 140 U. S., 529.

And the heirs-at-law under their claim to these moneys are just as much subject to the jurisdiction of this court as Price would have been in his lifetime. The discussion, and the principles laid down, and the conclusion to which the learned chancellor arrived in the suit of Forrest *vs.* Price, 7 Dickinson, page 16, in these respects are distinctly approved.

These conclusions would seem to dispose of the case. But it may be well to expressly notice a further insistment by the defendants,
78 and that is that the receiver appointed by the proceedings under the original bill can have no standing to take and receive these moneys; that any assignment of a claim made

contrary to the provisions of section 3477 of the Revised Statutes of the United States, which requires the assignment to be clothed with certain formalities, is void. Whilst this is true as to assignments of claims between the parties made under that statute, but the receiver appointed in this suit in equity takes title from Price or the defendants by operation of law, assisted by such actual assignment as may be decreed by the court, and of such assignments the statute to which reference is made is not prohibitive. The receiver is an officer, an assignee, receiving his power from a court of competent authority and jurisdiction, and the title of Price or the defendants is vested in him by operation of law to take, have, and possess the property and things in action of Price to satisfy the judgment and decrees of the court from which he derives his authority. It is entirely within the power of the court of chancery, in order to render effective its decree of appropriation of the fund to the payment of debts, to order the defendants to actually make and execute a formal assignment to fully accomplish the object of the decree.

These classes of assignments to claims against the Government of the United States has been upheld and sustained wherever the question has been fairly before the Court of Claims or the Supreme Court of the United States.

79 Thus full effect is given as well to assignments ordered by courts of competent jurisdiction as to those assignments which result by operation of law by reason of the appointment of a receiver for the purposes contemplated by the present suit.

Under the authorities a receiver appointed by a court of competent jurisdiction will be sustained in asserting the same title to choses in action which might, as against the Government, be asserted by assignees in bankruptcy under deeds of general assignment.

It may be well, in the light of authority, to consider the effect of section 3477 of the Revised Statutes of the United States, so long as it is contended under it that the court is without any jurisdiction to compel the defendants to execute an assignment or to give effect to any assignment by operation of law.

The statute is entitled "An act to prevent fraud upon the Treasurer of the United States," approved February 26, 1853, 10 U. S. Statutes, 170, and is in the following language:

"All transfers and assignments made of any claim upon the United States, or any part or share thereof or interest therein, whether absolute or conditional, and whatever may be the consideration thereto, and all powers of attorney, orders, or other authorities for receiving payment of any such claims or any part or share thereof, shall be absolutely null and void unless they are freely made and executed in the presence of at least two attesting

80 witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment and must be acknowledged by the person making it before an officer having authority to take acknowledgement of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the

time of the acknowledgement, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

The true meaning and purpose of Congress in this enactment was passed upon by Mr. Justice Woods in Hebbs *vs.* McLean, 117 U. S., 576, who says that the object of the statute was "that the Government might not be harassed by multiplying the number of persons with whom it has to deal and might always know with whom it was dealing until the contract was completed and settlement made."

In the case of the United States *vs.* Gillis, 95 U. S., 416, Justice Strong distinctly recognized that certain claims under this statute were assignable and might be sued in the Court of Claims in the name of the assignee, without undertaking to determine what claims might be assigned, and says: "That there may be such claims is clearly stated in the act of 1853, and their devolutions of title, by force of law, without any act of parties or voluntary assignments, compelled by law, which may have been in view."

81 In the case of Irwin *vs.* U. S., 97 U. S., 392, the court said: "The act of Congress of February 26, 1853, to prevent frauds upon the Treasury of the United States, which was the subject of consideration in the Gillis case, applies only to cases of voluntary assignments of demands against the Government and does not embrace cases where there has been a transfer of title by operation of law. The passing of claims of heirs, devisees, or assignees in bankruptcy are not within the evil at which the statute aimed, nor does the construction given by this court deny to such parties a standing in the Court of Claims."

The Supreme Court of the United States has sustained partial payments made at the Treasury to an assignee. McKnight *vs.* United States, 98 U. S., 179.

It has been held that a general assignment made for the benefit of creditors, including all rights, credits, effects, and property of every description, covered what might be due to the assignor under a contract with the Government for carrying the mail. In Goodman *vs.* Niblack, 102 U. S., 556, Mr. Justice Miller, in view of the language of the opinion in Spofford *vs.* Kirk, 97 U. S., 484, says: "We held it did not include a transfer by operation of law, or in bankruptcy, and we said it did not include one by will. The obvious reason of this is that there can be no purpose in such cases to harrass the Government by multiplying the number of persons with whom it has to deal, nor any danger of enlisting improper influences in advocacy of the claim, and that the exigencies of the party

82 who held it justified and required the transfer that was made.

In what respect does the voluntary assignment for the benefit of his creditors, which is made by an insolvent debtor of all his effects, which must, if it be honest, include a claim against the Government, differ from the assignment which is made in bankruptcy? There can here be no intent to bring improper means to bear in establishing the claim, and it is not perceived how the Government can be embarrassed by such an assignment. The claim is not specifically mentioned, and is obviously included only for the

just and proper purpose of appropriating the whole of his effects to the payment of all his debts. We cannot believe that such a meritorious act as this comes within the evil which Congress sought to suppress by the act of 1853."

Assignments of moneys due from the Treasury Department to receivers appointed under supplementary proceedings for the benefit of a creditor have been upheld by the Court of Claims. I think it may be said that the cases show that they have been uniformly sustained by that court as well as by the Supreme Court of the United States. Redfield, receiver, *vs.* United States, 27 Court of Claims Reports, 393. In this latter case the plaintiff was a receiver appointed by the supreme court of the State of New York city and county of New York. He also had the additional claim of being the assignee of all demands against the United States on the part of one Mitchell, the assignment being executed by Mitchell for
83 the purpose of enabling the claimant to more effectually perform the duties of his receivership under his appointment by the supreme court of New York. Weldon, J., delivering the opinion in the Court of Claims, says: "It may be that the personal assignment by Mitchell to claimant, it being for the indebtedness of the United States only, would not have the effect to transfer the claim to him, but his appointment as receiver under the order of the court has, in our opinion, that effect. It was held in the case of Erwin *vs.* The United States, 92 U. S. R., 392, that the act of Congress of February 26, 1853, to prevent frauds upon the Treasury of the United States, which was the subject of consideration in the Gillis case, applies only to the voluntary assignment of demands against the Government. It does not embrace cases where there has been a transfer of title by operation of law. The passing of claims to heirs and devisees, or assignees in bankruptcy, are not within the evils at which the statute aimed, nor does the construction given by this court deny to such parties a standing in the Court of Claims."

The conclusion reached from these authorities is that the statute does not prohibit nor interfere with assignments in bankruptcy, nor general assignments for the benefit of creditors, nor assignments decreed by a court of competent jurisdiction between parties for the benefit of the creditors of the person or estate of the claimant, nor to assignments by operation of law, as recognized and en-
84 forced by the various courts of competent jurisdiction in the several States of the Union; besides, this interpretation of the statute is entirely consonant and in furtherance of justice. The only case relied upon by defendants is that of St. Paul and Duluth Railroad Company *vs.* United States, 112 U. S., 733. An examination of the case will show that all that was decided in that case was that the voluntary transfer of a claim against the United States for compensation to a railroad company for carrying the mail, made to another company by way of mortgage, does not fall within the principles of exceptions to the statute, such as an assignment by operation of law or a voluntary assignment for the benefit of creditors. The court said in that case in effect that the fact that the mortgage was fore-

closed by judicial action did not constitute an assignment by operation of law. This case is no authority to sustain the point that the receiver of the property and things in action of a debtor for appropriation to the payment of debts, deriving his authority from a court of competent jurisdiction, does not take, by virtue of an assignment by operation of law, a claim against the United States.

The conclusion reached is that the order of the chancellor overruling the pleas must be affirmed with costs.

85 [Endorsed:] New Jersey court of errors and appeals. March term, 1896. Between Rodman M. Price *et als.*, appellants, and Ann M. Forrest, administratrix of Samuel Forrest, deceased, *et al.*, appellees. Opinion — Lippincott, J. Filed Dec. 2, 1896. Henry C. Kelsey, clerk.

86 Court of Errors and Appeals of New Jersey.

RODMAN M. PRICE ET ALS., Appellants,
vs.
ANNA M. FORREST, Administratrix, &c., *et als.*, Respondents.

On appeal from the decree of the court of chancery.

McGee, Bedle & Bedle, for appellants.
Cortlandt & Wayne Parker, for respondents.

The opinion of the court was delivered by—

LIPPINCOTT, *J.*:

This appeal from the final decree of the court of chancery in this cause brings up for decision the rights of the parties under the act of Congress set out in the pleadings and under section 3477 of the Revised Statutes of the United States.

These questions having been passed upon in the opinion of this court on the appeal from the decree of the chancellor overruling the pleas of the defendants in this cause, 35 Atlantic Reporter, 1075, the decree now appealed from, for the reasons there given, must be affirmed with costs.

"Filed Apr. 22, 1897.

GEORGE WURTS, *Clerk.*"

87 [Endorsed:] New Jersey court of errors & appeals, November term, 1896. Between Rodman M. Price *et als.*, appellants, *vs.* Anna M. Forrest, adm'x, *et als.*, respondents. Opinion. Filed April 22, 1897. George Wurts, clerk.

88 Court of Errors & Appeals in the Last Resort in All Causes.

Between—

RODMAN M. PRICE & ALS., Appellants,
and
ANNA M. FORREST, Administratrix of Samuel Forrest, Dec'd; Charles Borcherling, & *als.*, Respondents.
} On Appeal from Chancery on Final Decree.

This cause having come on to be heard at the November term of this court last past, and the same having been argued by Mr. Flavel McGee, of counsel for the appellants, and Mr. Cortlandt Parker, of counsel for the respondents, and the matters involved having been duly considered by the court, it is now, on this eleventh day of January, one thousand eight hundred and ninety-seven, on motion of Cortlandt & Wayne Parker, solicitors & of counsel for the respondents, ordered, adjudged, and decreed that the decree of the chancellor, from which appeal to this court was taken, be, and the same is hereby, in all things affirmed, with costs, to be taxed, and that the record be remitted to the court of chancery to proceed therein and therewith according to law.

Endorsed: "Filed Jan. 11, 1897. Henry C. Kelsey, clerk."

89 [Endorsed:] Court of errors & appeals. Between Anne M. Forrest & *als.*, respondents, and Rodman M. Price & *als.*, appellants. Final decree. Cortlandt & Wayne Parker, solicitors of respondents. "Filed Jan. 11, 1897. Henry C. Kelsey, clerk."

90 Supreme Court of the United States.

RODMAN M. PRICE, MADELINE PRICE, GOVERNEUR PRICE, Francis Price, and E. Trenchard Price, Plaintiffs in Error,
vs.
ANNA M. FORREST and CHARLES BORCHERLING, Defendants in Error.

Know all men by these presents that we, Rodman M. Price, of Brooklyn, New York, and Anderson Price, of Rutherford, Bergen county, New Jersey, are held and firmly bound unto Anna M. Forrest and Charles Borcherling in the sum of five hundred dollars, to be paid to the said Anna M. Forrest and Charles Borcherling, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this seventh day of April, A. D. one thousand eight hundred and ninety-seven.

Whereas lately, at a term of the court of errors and appeals in the last resort in all causes in and for the State of New Jersey, in a suit depending in said court between Anna M. Forrest and Charles

Borcherling, complainants and respondents, and Rodman
91 M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, defendants and appellants, judgment was rendered against the said Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, appellants, and the said Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Anna M. Forrest and Charles Borcherling, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the sixth day of May next:

Now, the condition of the above obligation is such that if the said Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price shall prosecute their said writ of error to effect and answer all costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain of full force and virtue.

RODMAN M. PRICE. [SEAL.]
ANDERSON PRICE. [SEAL.]

Sealed and delivered in the presence of—
KENNETH FOWLER.

92 STATE OF NEW JERSEY, } ss:
County of Bergen, }

Anderson Price, of full age, being duly sworn, on his oath saith that he owns real estate in Rutherford, Bergen county, New Jersey, worth upwards of one thousand dollars over and above all incumbrances and over and above all his just debts and liabilities.

ANDERSON PRICE.

Sworn and subscribed this ninth day of April, 1897, before me—
FRANCIS H. McGEE,
A Notary Public of New Jersey.

93 [Endorsed:] Supreme Court of the United States. Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, *vs.* Anna M. Forrest and Charles Borcherling, defendants in error. Defendants' bond for costs. "Filed April 10, 1897. George Wurts, clerk." Approved by Alex. T. McGill, chancellor, presiding judge of the court of errors and appeals in the last resort in all causes of New Jersey.

94 STATE OF NEW JERSEY, }
Department of State. }

I, George Wurts, secretary of state of the State of New Jersey and *ex officio* clerk of the court of errors and appeals in the last resort in all causes in and for the State of New Jersey, do hereby certify that the foregoing is a full, true, and complete copy of the record in the case of Anna M. Forrest and Charles Borcherling, complainants

and respondents, and Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, defendants and appellants, and of the opinions filed in the cause, and of the assignment of errors and all proceedings in the cause, as the same remains on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the official seal of said court this 22nd day of April, A. D. 1897.

[Seal of the Secretary of the State of New Jersey.]

GEORGE WURTS,
Secretary of State and ex Officio Clerk of the Court of Errors and Appeals.

95 Supreme Court of the United States.

RODMAN M. PRICE, MADELINE PRICE, Governeur Price, Francis Price, and E. Trenchard Price, Plaintiffs in Error,
against
ANNA M. FORREST and CHARLES BORCHERLING, Defendants in Error.
} Statement of Errors.

The plaintiffs in error, in accordance with section nine of rule ten of the rules of the Supreme Court of the United States, hereby state:

I.

That they intend to rely on each of the errors alleged in the assignment of errors returned with the record and now on file in this court in this cause.

II.

That the parts of the record which they think necessary for the consideration thereof are as follows:

1. The bill for revivor and relief.
2. The order of the chancellor for an injunction on the bill.
3. The pleas of Madeline Price, Governeur Price, Francis Price, Rodman M. Price, and E. Trenchard Price to said bill, to-
96 gether with the schedule thereto annexed, which consists of an opinion by Caleb Cushing, Attorney General of the United States, to the Secretary of the Navy, James C. Dobbin, dated March 12th, 1854, and the affidavit and certificate attached to said pleas.

There were two of these pleas, one filed by Madeline Price and Governeur Price, and one by Francis Price, Rodman M. Price, and E. Trenchard Price, which were identical in statement, and only one of which need be printed, with its schedules, affidavits, and certificate.

4. The decree of the chancellor of New Jersey, Alexander T. McGill, overruling the pleas with costs.
5. The notice of appeal to the court of errors and appeals of New Jersey and certificate thereto annexed.

6. The petition of appeal to the same court, with the acknowledgment of service and memorandum of joinder in appeal.

7. The final decree of the court of errors and appeals of New Jersey on that appeal.

8. The decree upon remittitur on that appeal, dated June nineteenth, 1896.

9. The answer of Madeline Price, Governeur Price, Francis
97 Price, Rodman M. Price, and E. Trenchard Price to the bill for revivor and relief, together with the schedule thereto annexed, which schedule consists of the same letter of the Attorney General of the United States, originally annexed to the plea above mentioned, and which letter, instead of being printed in full, may be referred to as printed at length in the schedule annexed to the plea.

10. The decree of the chancellor on bill and answer; which decree is dated the 25th day of June, 1896, and was filed the 30th day of August, 1896.

11. The appeal from this decree, with its certificate.

12. The petition of appeal to the court of errors and appeals of New Jersey from this last-named decree.

13. The answer of the respondents, Anna M. Forrest and Charles Borcherling, to this last-named petition of appeal.

14. The final decree of the court of errors and appeals of New Jersey on this last-named appeal; which decree bears date and was filed on the 11th of January, 1897, and is entitled "On remit-itur from the court of errors and appeals in the last resort in all causes."

98 15. The opinion of the court of errors and appeals of New Jersey, pronounced by Judge Lippincott, on the appeal from the decree of the chancellor overruling the defendants' pleas.

16. The opinion of the court of errors and appeals of New Jersey on the appeal from the final decree of the chancellor in the cause.

17. The assignment of errors in the cause in this court.

FLAVEL McGEE,
Attorney for and of Counsel with the Plaintiffs in Error.

99 [Endorsed:] Supreme Court of the United States. Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, against Anna M. Forrest and Charles Borcherling, defendants in error. Plaintiffs' statement of errors relied on and parts of the record to be printed. Flavel McGee, att'y for and of counsel with plaintiffs in error.

100 [Endorsed:] Case No. 16,576. Supreme Court U. S., October term, 1898. Term No., 105. Rodman M. Price *et al.*, P. E., *vs.* Anna M. Forrest *et al.* Statement of errors & designation of parts of record to be printed by P. E. Filed July 23, 1897.

101 Supreme Court of the United States.

RODMAN M. PRICE, MADELINE PRICE, GOVERNEUR PRICE, Francis Price, and E. Trenchard Price, Plaintiffs in Error,
against
ANNA M. FORREST and CHARLES BORCHERLING, Defendants in Error.

Service is hereby acknowledged of the statement of the plaintiffs in error of the errors on which they intend to rely, and the parts of the record which they think necessary for the consideration thereof in the above-entitled cause.

Dated July 22d, 1897.

CORTLANDT & WAYNE PARKER,
Attorneys for Def'd'ts in Error.

102 [Endorsed:] Supreme Court of the United States. Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, against Anna M. Forrest and Charles Borcherling, defendants in error. Acknowledgment of service of plaintiffs' statement of errors relied — and parts of the record for printer. Cortlandt & Wayne Parker. Flavel McGee, att'y for and of counsel with plaintiffs in error.

103 [Endorsed:] Case No. 16,576. Supreme Court U. S., October term, 1898. Term No., 105. Rodman M. Price *et al.*, P. E., *vs.* Anna M. Forrest *et al.* Proof of service of statement of errors and designation by P. E. of parts of record to be printed. Filed July 24, 1897.

Endorsed on cover: Case No. 16,576. New Jersey court of errors and appeals. Term No., 105. Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, *vs.* Anna M. Forrest and Charles Borcherling. Filed April 30, 1897.

No. 797. 36 Ex. 105

Brief of Mr. McGee for P. E. (on mo

Supreme Court of the United States.

OCTOBER TERM, 1896.

Filed May 7, 1897

RODMAN M. PRICE, MADELINE PRICE, GOVERNEUR PRICE, FRANCIS PRICE and E. TRENCHARD PRICE,
Plaintiffs in Error,

vs.

ANNA M. FORREST and CHARLES BORCHERLING,
Defendants in Error.

In Error to the Court of Errors and Appeals of New Jersey.

Brief of Flavel McGee on motion of the defendant in error to dismiss or affirm in the above entitled cause.

The defendants motion is twofold: First, to dismiss the writ because Alexander T. McGill, the Chancellor, presiding Judge of the Court of Errors and Appeals in the last resort in all causes in New Jersey, was not Chief Justice, or Judge, or Chancellor of the court rendering the judgment or passing the decree complained of in the writ of error and, second, to affirm the decree below on the ground that the question on which jurisdiction depends is frivolous.

I.

As to the motion to dismiss.

The amended and present Constitution of New Jersey, article 6, section 2, provides that the Court of

Errors and Appeals shall consist of the Chancellor the Justices of the Supreme Court and six Judges, or a major part of them.

1. Gen. Stat. of New Jersey, pp., LIX.

The act entitled "An Act relative to the Court of Errors and Appeals," Revision approved March 27, 1874, speaking of said court, provides, that the Chancellor, when present, shall be the president of the court; in case of his absence the Chief Justice of the Supreme Court, and in case of his absence the senior in office of the Justices of the Supreme Court who may be present.

1. Gen. Stat., pp. 1021, section 3.

In other words, by this statute, the Chancellor is made the first in office of the members of the Court.

The statute of the United States, under which writs of error to state courts is taken, provides, that a citation, when it is issued by the Supreme Court to a state court, shall be signed by the Chief Justice, or Judge, or Chancellor of such Court rendering the judgment or passing the decree complained of, or by a Justice of the Supreme Court of the United States, in no case designating which of the Judges thus mentioned is to perform the service, nor in any wise indicating that the signature must be made by a Judge who tried the cause, but on the contrary, manifesting, by the authority given to a Justice of the Supreme Court of the United States who did not try the cause, that the intention of the statute was not to secure the service in that behalf of one who tried the cause, but of the chiefest Judge of the court of last resort of the State, or of a member of the Federal Supreme Court.

In the case of Bartemeyer vs. Iowa, 14 Wal. 26, it was held by this Court that not only must the writ be allowed by one of the Justices mentioned in the Federal statute in order to insure jurisdiction, but that where a state court consisted of a chief justice and three associate justices, the writ must be allowed by the chief justice of the court if allowed by any justice of that court, and that an allowance by one of the associate justices would be bad.

Nowhere is there intimated, either in the statute or adjudication of this court any intention to confine the right of allowance to one of the judges who heard the cause, but on the contrary it is distinctly affirmed that the allowance must be made by the chiefest of the justices of the court to which the right of allowance is committed.

As must appear by this grouping of authorities, the Chancellor is made by the Constitution and statute of New Jersey the chiefest of the Justices of the Court of Errors and Appeals. He is mentioned first in the Constitution, and is specifically appointed by the statute to preside when present, and in point of fact he is the head of the Court, and the head of the judiciary of the State of New Jersey.

I take it that the law is not intended as a net, in the technicalities of which practitioners can be caught and defeated against justice.

In view of the decision in Bartemeyer vs. Iowa, what must a practitioner assume as the law in seeking for a Judge to sign his citation. It is evident from the provision of the Federal statute that he is not expected to carry his papers to Washington for an adjudication of his right to the writ, otherwise the permission to seek a Judge of the Court of his State would not have been conceded to him, and in further

view of the decision in the Bartemeyer case, that judge, so to be sought by him, is to be the highest judge of the highest court. What is he to conclude but that he will be right, if he seeks that Judge and presents the case to him?

The contention of my learned friends is that the Chancellor was not the Chief Justice, or Judge, or Chancellor of the Court rendering the judgment, because he sat below and was thereby incapacitated to sit in that particular case, whereas the constitution and statute answers that he is the President of it.

That Alexander T. McGill was Chancellor is a question of fact, and, I suppose, cannot be contested at this stage of the case, but if so, I refer the Court to the last New Jersey Equity Report, the 9th of Dickinson, wherein Alexander T. McGill is set down as Chancellor and Ordinary, and to the record of this cause, now on file, wherein it appears that he is in point of fact the Chancellor from whose decree the appeal was taken to the Court of Errors and Appeals.

In what position would we stand before the Court if I had applied to any other Judge of said Court? The Bartemeyer case told me that I must go to the highest Judge of the Court. The Chancellor is the highest Judge of the Court, and if I go to any other, I take the risk of being dismissed under the case cited.

Moreover, there was peculiar propriety in applying to the Chancellor. He it was who heard the case below; he it was whose decision was adverse to the defendants below, who were the appellants in the Court of Errors and Appeals, and who are the plaintiffs in error here, and it was his decision, adverse to the plaintiffs in error, which had been affirmed by the Court of Errors and Appeals.

If there was any Judge in the whole State peculiarly acquainted with the cause, and all the questions therein involved, it was he, and if there was any Judge to be found, whose interest lay against allowing the appeal, it was he, because his opinion, adverse to the plaintiffs in error had been affirmed.

I submit, therefore, that a Court, of the dignity of this Court, will not dismiss this writ of error for the reason assigned by the defendants in error. I assume that the primary object of every Court is to do justice, and not to deprive suitors of their rights by reason of the misapprehension of counsel, even if they be found to have been guilty thereof.

II.

The motion to affirm.

This motion is made under subdivision 4 of rule 6 of the Supreme Court, and in order to its success, it must appear by the record that the writ of error was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument. That this state of affairs cannot be predicated in the cause before the Court a reference to the record now on file, but not on file when the motion was filed, will make manifest.

The record discloses that Rodman M. Price, now deceased, was by an Act of Congress, approved February 23, 1891, awarded certain moneys, which act was in the words and figures following, to wit:

"An Act for the Relief of Rodman M. Price."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, that the Secretary of the Treasury be, and he is hereby authorized and directed to adjust upon

principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and Acting Navy Agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor A. M. Van Nostrand Acting puser, January 14, 1850, and pay to said Rodman M. Price *or* his heirs out of any money in the Treasury not otherwise appropriated any sum that may be found due him upon such adjustment."

"Approved February 23, 1891."

As will appear by the answer of the defendants below, Rodman M. Price, who was afterwards Governor of New Jersey, was in his early days, purser of the United States Navy, and Acting Navy Agent at San Francisco prior to and up to the year 1850. That about that time he was relieved of his office, and one Van Nostrand designated as his successor at that station, and that on the 14th of January, 1850, he advanced to said Van Nostrand Seventy-five thousand dollars out of his private funds, for which he took the receipt of said Van Nostrand as acting purser, but without the approval or signature of the commanding officer thereat. That this money had never been returned to him by the United States, but that on the contrary, all liability therefor had been denied, and under the opinion of Caleb Cushing, the Attorney General, was determined not to be a valid claim aginst the Government and that the moneys awarded by the Act of Congress were therefore in the nature of gratuity, and the plaintiffs in error claimed that the gift created by the act was one to Governor Price in so far as he might receive the same, and to his heirs as original takers of the whole or any part thereof not drawn by him. It further appears by the case that under this Act about $75,000.00 were awarded by the Government.

It further appears by the case that Samuel Forrest, many years ago obtained a judgment at law, against Governor Price, and that on the strength of that judgment his widow filed a creditor's bill in the Court of Chancery of New Jersey, in which Mr. Borcherling was appointed a receiver in execution.

It further appeared that there had been a decree of the Court of Chancery, directing Gov. Price to convey to this receiver all his property and the evidence thereof, and especially to endorse and deliver to the receiver four drafts received by him from the Assistant Treasurer of the United States for the sums of $2,704.08, $13,500.00, $20,000.00, and $9,000.00 respectively of said moneys, and enjoining him and his agents from intermeddling with the receiver in regard thereto.

This order Gov. Price disregarded, collected the drafts, was attached for contempt, and died pending the proceedings in attachment, and subsequently the bill in this cause was filed against the present plaintiffs in error, his children and only heirs, reciting the foregoing proceedings and orders, the death of Gov. Price, that the Treasury Department had paid said amounts to Gov. Price; that there still remained in the Treasury about $23,000.00 of said moneys awarded under said act; that the Prices' right to all the balance of said moneys had passed to the Receiver; that the present plaintiffs in error had no right thereto or therein, and praying that they may be restrained from making any demand for said balance in the Treasury upon the Government, the Secretary of the Treasury, or any officer thereof, and that they may be decreed to pay the same to the Receiver.

To this bill, pleas were filed, setting up the Act of Congress above referred to; the facts upon which it

was founded; the death of Gov. Price, and that the defendants, the present plaintiffs in error were his heirs, and that they, under said Act and the laws of the United States were entitled to the balance thereof remaining in the Treasury.

These pleas were overruled by the Chancellor, his decree was appealed from to the Court of Errors and Appeals, and was there affirmed, and thereupon the defendants below, the present plaintiffs in error, filed an answer, setting up substantially the same facts, and claiming the right to said moneys under the said Act of Congress as heirs of said Rodman M. Price, alleging that no will of the said Price had been probated; that he left no estate; that no letters of administration had been issued thereon, and that they had no assets from him; denying the right of the Court of Chancery to sequester the moneys in the Treasury of the United States; denying the right of the complainants, the present defendants in error, to the moneys, and alleging their own exclusive right thereto under said Act of Congress and the laws of the United States.

The cause was heard upon bill and answer, and the defendants below, the present plaintiffs in error, were by final decree enjoined, as appears by the record from making any demand upon or application to the government, the Secretary of the Treasury, or any officer of the Treasury for any part of the said money remaining in the Treasury at the time of the filing of the said bill of complaint.

From this decree an appeal was taken to the Court of Errors and Appeals, and was there affirmed in so far as applicable to the questions raised on the final hearing.

The opinion of the Court, overruling the pleas, as will be seen by the record, deals principally with the question of the right of the Court of Chancery to deal with these moneys in the Treasury of the United States, and holds that the moneys awarded by the act were not a gratuity; that the words "or his heirs" were simply words of succession; that the assignment of the claim against the United States ordered by the Court of Chancery was not prohibited by section 3,477 of the Revised Statutes of the United States; that an assignment so ordered was an assignment by operation of law; that the evils sought to be avoided by that section were not within the reach of this decree, and that the Court of Chancery had jurisdiction to determine the right of distribution of such claim in payment of a judgment from the claimant to his creditors.

The opinion of the Court on the appeal from the final decree, as will be seen by the record, held that the appeal brought up for decision the rights of the parties under the act of Congress set out in the pleadings, and under section 3,477 of the Revised Statutes of the United States, and held that these questions, having been passed upon in the opinion of the Court on the appeal from the decree of the Chancellor overruling the pleas, the decree then appealed from, for the reasons there given, must be affirmed with costs; in other words, adopted so far as they applied the rulings of the opinion on the decree overruling the pleas, and affirmed the final decree therefor.

The right claimed by the defendants below, the present plaintiffs in error, was the right to the balance still remaining in the treasury of this money under this act of Congress, and under section 3,477 of the Revised Statutes of the United States, and the decision of the Court was against the right so claimed by the defendants, and I am unable to conceive of a case

where a Federal question is more explicitly disclosed with an adverse decision than this.

The claim made below was:

1. That the decree of the Chancellor was erroneous and illegal under section 3,477 of the Revised Statutes of the United States, for the reasons:

1. That the assignment was not freely made.

2. That no warrant for the payment thereof had been issued, and that the assignment ordered did not fall within any of the exceptions to the rule, namely, assignments in insolvency and bankruptcy, nor assignments by operation of law.

2. That under the act of Congress above stated, the decree should be reversed, for the reason that the defendants, as heirs of Rodman M. Price were, under that act, original takers.

And it was these particular claims, based upon these particular statutes of the United States, which were, by decree of the Chancellor and the affirmance of the Court of Errors and Appeals, decided adversely to the defendants below, the present plaintiffs in error.

And on the case below I cited, and cite now, the following cases:

St. Paul and Duluth Railroad Company vs. United States, 112 U. S., 733, wherein the Court held that the voluntary transfer of a claim against the United States, made by way of mortgage when made absolute by judicial sale was void, because the transfer was completed by judicial sale, and was, therefore, not voluntary.

Spofford vs. Kirk, 97 U. S., 484.

In that case Kirk had given orders on his agents in favor of third parties for the payment, out of funds to be collected from the government, both of which were accepted and sold to innocent third parties in good faith, and the court held that a court of equity had no jurisdiction in that case notwithstanding the voluntary assignment, because there was no warrant issued.

United States vs. Gilles, 95 U. S., 407, wherein this Court held that there could be no assignment of a claim at common law; that under section 3,477 of the Revised Statutes of the United States, any equitable right which might be held to exist was negatived, and that the assignment of the claim in question, not having contained in that case the formalities of the act, was void, and that the act creating the Court of Claims did not remedy the difficulty, and that the act operates on the claims themselves, and not as limitations on, or definitions of, the powers of those who are to adjust them, or adjudicate upon them; and further that that act was of universal application, and covered all claims against the United States, in every tribunal in which they might be asserted.

And I there contended, andhere contend, that these decisions under the Act covered every phase of this case:

1. That a valid assignment could not be made by judicial decree.

2. That no assignment was valid prior to the issue of a warrant, and :

3. That the inability to assign at common law was made permanent as to claims against the United States, and could not be abrogated by the order of a Court.

I further cited the case of Erwin vs. the United States, 97 U. S., 392, and Boodman vs. Niblack, 102 U. S., 556, in which the distinction between assignments by the order of a Court in a suit at law or in equity, and a transfer by assignment in bankruptcy or insolvency, was drawn; and I particularly called the attention of the Court below to the distinction between the point at issue, namely, the power of the Court to compel a transfer of the claim against the government, and that line of cases which hold that where the claimant has made an assignment, and the government officers have recognized and paid on it, he will not be allowed to set up the statute against it, as for example,

Bailey vs. United States, 109 U. S. 432.
Hobbs vs. Mc Lean, 107 U. S. 567.

I therefore contend, as I contended below, that under the decisions of this Court, this decree, being neither a voluntary assignment for the benefit of creditors, nor one in bankruptcy, nor by will, nor by descent, was not within any of the exceptions to Section 3477 of the Revised Statutes of the United States, and that in as much as it was not freely made, was not executed in the presence of two witnesses, and after the issuing of a warrant therefor, did not contain a recitation of a warrant, was not acknowledged before an officer therein provided, and did not contain the certificate thereby required, and lacked, and must lack, at least two of the requisites, namely, that of freedom of will and recitation of a warrant, that any assignment made thereunder was illegal, and must be void.

I further there contended, and contend here, that in as much as the Court had no power to order an assignment of this money which would be valid, or in anywise to give to the complainants below a right to recover from the Treasury, that the decree in the case,

enjoining the defendants below, these plaintiffs in error, from making demand upon or application to the government, the Secretary of the Treasury or any officer of the Treasury for the moneys, was likewise illegal, by reason of the fundamental principle of law in all jurisdictions, that a Court will not and cannot make a valid order which it has no power to carry out, and will not and cannot make a valid order to prevent a party from obtaining that which it has not power to take away from him.

Moreover, I contended there, and contend here, that under the proper construction of the Act of Congress of 1891, cited in the case, the language used is carefully devised to prevent the money from being sequestered for the creditors of Price. The language is "and pay to said Rodman M. Price, or his heirs."

It cannot be predicated that the Congress of the United States, made up as it is of representative men of the country, could have used this language, intending it to mean something else than its words express. It expressly avoids the use of the words executors, administrators, legal representatives, or any other language which can be held to indicate that the gift was to be solely to Price and those who under him could take his personal estate.

On the contrary it used the words "or his heirs" indicating a definite class of persons who do not take the personal estate of a decedent, and excluded legal representatives, against whom and whom only in the absence of assets, an action can be brought for the recovery of the debts of the decedent. Moreover there is force in the use of the disjunctive conjunction "or" which discloses the legislative intention not to confine the gratuity to Gov. Price and those claiming under him—but to create two beneficiaries—

namely the Governor if and in so far as he received it and his heirs in so far as he failed to do so during his life.

I therefore respectfully contend that a Federal question is presented; that the construction of two statutes of the United States is open to discussion in the cause, and that the claim under these statutes set by the plaintiffs in error has been decided adversely by the Court below, and further that the question of jurisdiction raised is not frivolous, but on the contrary one involving very considerable property interests, and upon which the plaintiffs in error are entitled to have the deliberate judgment of this Court.

Moreover that the proceeding is not for delay is manifested by the fact, first, that the litigation has been so stubbornly contested in the State courts, and second, that although the decree was rendered at the last term of the Court of Errors and Appeals at which opinions have not yet been rendered, and although the opinion of the court of last resort was not filed until after the taking of the writ of error, nevertheless the cause is already in this Court.

It is true, as alleged in the brief of the Messrs. Parker and Mr. Hackett that no supersedeas has been given, but I respectfully submit that none was necessary.

The money is in the Treasury and cannot be withdrawn. No greater security could be given to the defendants in error than that fact, and as no execution can issue under this decree, no supersedeas ought to be required. The plaintiffs in error are poor, and would be unable to give a bond in double the amount of the moneys in the Treasury, nor can I believe the court would require it.

If this writ be dismissed, or this decree affirmed, we will have the anomalous position of moneys in the Treasury which the plaintiffs in error are enjoined from collecting, and which the defendants in error are by law prevented from collecting, and the matter of to whom it shall be paid will become one dependent upon the discretion of the disbursing officer, and to him will be given a power of disposition and discretion forbidden by the statute to the Court.

If the Court should be of opinion that an error has been made in the selection of the Judge to whom application should be made for the allowance of the writ, then I respectfully submit that the Court, after this argument, should either allow the writ or give the plaintiff in error a new writ, and permit the matter to go to final hearing, and that there is neither justice nor right in compelling the plaintiffs in error to suffer for an error in construction of an ambiguous statute, about the meaning of which even the justices of this court differed in the case of Bartemeyer vs. Iowa above cited.

I respectfully submit that the motion in both its branches should be denied with costs.

Frank McGee.

No. 105.

Supreme Court of the U. S.

Brief of McGee for P. E.

OCTOBER TERM, 1898.—No. 105.

Filed Nov. 10, 1898.

RODMAN M. PRICE, MADELINE PRICE, GOVENEUR PRICE, FRANCIS PRICE, AND E. TRENCHARD PRICE, Plaintiffs in Error, *vs.* ANNA M. FOREST AND CHARLES BORCHERLING, Defendants in Error.	In Error to the Court of Errors and Appeals of the State of New Jersey.

BRIEF OF FLAVEL McGEE FOR THE PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

This cause was a suit in equity, brought in the Court of Chancery of New Jersey, wherein the defendants in error were complainants, and the plaintiffs in error were defendants, and was for revivor and relief.

(Case, pages 11 to 23.)

The original bill alleged a recovery against said Rodman M. Price by said Samuel Forrest of seventeen thousand dollars, and seventy-eight dollars and four cents costs, the issue of execution thereon, its return unsatisfied, the death of Forrest on the seventh of November, eighteen hundred and sixty, the granting of letters of administration to the complainant, Anna M. Forrest, the procurement by her of a writ of scire facias to obtain execution of said judgment against

Price, a judgment for such execution, and its issue on the fourteenth of April, eighteen hundred and seventy-four.

Allegations in said bill of the possession by Price of a claim for moneys upon a judgment against Erasmus B. Keyes and Edmund Scott, and other equitable rights; and that said original bill prayed an injunction against the collection by price of any of these moneys, or his sale or disposition of any lands or other property.

It further recites an answer to that bill on the fourth of December, eighteen hundred and seventy-four, by Rodman M. Price, his wife Matilda C. S. Price, and Francis Price, admitting the recovery of the judgment by Forrest, and alleging the ownership of the Forrest judgment by said Keyes, and that Keyes had written to him years before Forrest recovered the judgment against Price that he had paid Forrest the whole of the claim on which the Forrest judgment was founded; that Keyes had a large amount of the assets of the defendant Rodman M. Price, and that at the time of the said Forrest bringing his suit said Rodman M. Price had already sued Keyes for the money recovered in the name of said Price, in and by said judgment against Keyes in the State of New York; and that by reason of hostile relations between Keyes and Price the latter was unable to establish the payment of the claim of Forrest, and was obliged to let Forrest's suit go by default, and insisting that said Keyes, by his letters, was estopped from alleging that there was nothing due on the Forrest judgment, and that the other defendants believed the statements of Rodman M. Price to be true.

That said Answer further alleged that the lands on which execution was sought to be obtained, although they stood in the name of Rodman M. Price, were, in equity, the property of his father, the said Francis Price, and were bought by him for the benefit of the children of the said Rodman M. Price, but denied that he, Rodman M. Price, had any interest therein.

That said original bill further alleged that after the filing of said answer the said cause slept until about the ninth of August, eighteen hundred and ninety-two, when the complainant, Anna M. Forrest, filed therein a petition, in which she stated that since the filing of the bill of complaint in the cause no payment had been made upon the judgment therein mentioned, nor had she or her solicitors been able to find any property of Price out of which to make the amount of her judgment, and that the whole thereof remained due, and that the execution was unsatisfied. That on the fourth day of August, eighteen hundred and ninety-two, she caused another writ of execution to be issued to the Sheriff of Bergen, which was also returned unsatisfied; and that she stated further in said petition that it had lately come to the knowledge of her solicitors that the sum of about forty-five thousand dollars was about to be paid to said Rodman M. Price by the officers of the Department of the Treasury of the United States,—being the sum found to be due him from the Government of the United States by an accounting lately had between him and it. That said sum was to be paid by the delivery to said Price, or to his attorneys, of a draft of the Treasurer of the United States or some other negotiable security made or issued by its financial officers, and drawn payable to his, the said Price's own order, the rules of the Department of the Treasury forbidding it being made payable to any other person, or that said sum should be paid in any other way, and that said draft or negotiable security was to be made, and the transaction closed, on the Fifteenth of the then month of August. And further showed that Price had always exhibited great unwillingness to satisfy any part of said judgment. And further that in said Petition she believed that Price would, if he obtained the said money coming from the United States to him, at once take means to put the same beyond the reach of the Complainant, unless restrained by an order of said Court; and she prayed an injunction out of said Court, directed to said Price,

restraining and forbidding him from making any endorsement of such draft or any draft or other negotiable security of the United States which should come to his hands or the hands of any other person, or any money derived therefrom or thereby, to any person whatever, except the complainant or her Attorneys, until the further order of the Court; and that a Receiver might be appointed of said draft or other negotiable security; and that Price might be ordered and directed immediately on receipt of said draft or negotiable security to endorse the same to said Receiver, to the end that the amount thereof might be received by him as an officer of said Court of Chancery, and disposed of according to law, and such directions as should be therein made.

That upon the presentation of said Petition and affidavits sustaining it, a rule to show cause was made returnable on the twelfth of September, eighteen hundred and ninety-two, why the prayer of the Petition should not be granted and an injunction issue, and a Receiver be appointed, pursuant to the prayer of the Petition, and with an intermediate restraint upon said Price from making any endorsement of any such draft of the United States as mentioned in the Petition.

That a copy of said order was duly served upon said Price on the tenth day of August, eighteen hundred and ninety-two, and that about the fifth of September of that year said Price received from the Assistant Treasurer of the United States four several drafts signed by such Assistant Treasurer, and dated September fifth, for the following sums respectively: one for $2704.08, another for $13,500,00, a third for $20,000,00 and a fourth for $9,000,00; and that at various days in the said month of September, and in the month of October next following, naming the dates said Price endorsed said drafts, and himself received the money on them all, and applied it to his own use; and that on the third day of said October, the day on which he received the last of said moneys, he filed an answer to said Petition, stating that the judg-

ent of said Forrest and the complainant against him was paid, and that there was a sum of money due to him from the United States, voted to him or his heirs, by Congress, and that about forty-five thousand dollars was to be paid, but that said money was not amenable to complainant's claim even if valid, nor could it be lawfully paid to any receiver.

That said original bill further recited that on the tenth of October, eighteen hundred and ninety-two said Borcherling was appointed by the Court of Chancery Receiver of the property and things in action belonging to, or due to, or held in trust for said Price at the time of issuing said execution as thereinabove mentioned or at any time afterwards, and especially of said drafts, with authority to possess, receive, and it may be in his own name as such receiver, sue for the same, and that it was thereby made the duty of said Receiver to hold the said drafts subject to the further order of the Chancellor, and further that the defendant Price was thereby ordered to convey and deliver to the said Receiver all such property and things in action, and the evidence thereof, and especially forthwith to endorse and deliver the said drafts respectively, and each of them, to the said Receiver; and that Price, and all agents or attorneys of his were enjoined from intermeddling with the Receiver in regard to the drafts, and ordered and directed, if in possession or control thereof, to make delivery to him of the same, and to do all things necessary which should be in their power to put the Receiver in possession and control thereof, with this proviso: that if the drafts, excepting the draft for $13,500,00, should be delivered, with the endorsement of the defendant, to the clerk of the Court, the proceeds to be deposited to the credit of the cause, on or before the thirteenth day of October then instant, the order was to be void, and enjoining Price from any other endorsement than that.

That the said drafts were not delivered, and the order remained in force.

That the Receiver complied with the orders of the Court, by filing bond and otherwise. That he served upon Price copies of the order, and made demands for the drafts. That the service of the order was not made, nor said demands, until about the twenty-second of July, eighteen hundred and ninety-three, because said Price was not to be found within the State of New Jersey, but that notice thereof was given to him elsewhere shortly after the date thereof; and that on or about day of eighteen hundred and ninety-two (the day and the month being left blank) an attachment was issued by the Court of Chancery, against Price, for contempt of Court and disobedience of the order.

It then alleges proceedings under said Attachment; the conviction of Price thereof, and an order for his imprisonment in jail unless he comply with the order within five days.

That said forty-five thousand dollars, or thereabouts, the amount of said four drafts, was part of a certain debt of seventy-six thousand dollars, or thereabouts, awarded to said Rodman M. Price by the officers of the Treasury Department of the United States, under an Act of Congress of the United States, passed February 23, 1891, and agreed to be paid to him, in conformity with the directions contained in said Act, by said officers. That drafts for only the said four amounts were drawn and given to Price on account of said debt of seventy-six thousand dollars aforesaid, the officers at first believing that there was a counterclaim on the part of the United States for a debt due by Price to the Government, but afterwards, and on or about the day of Eighteen hundred and ninety-two, it was made known to the representatives of the Treasury Department to the contrary, and the Treasury Department had reconsidered its former determination and was about to pay Price the balance of about thirty-one thousand dollars, and that Price and his agents were actively seeking to obtain payment of the same; and that there-

upon, upon proof made to the Court of Chancery of the demands aforesaid, and the refusal of said Price, another order was made by the Court of Chancery on the eighteenth day of May, Eighteen hundred and ninety-four, directing Price to execute two instruments in writing, which before that time he had been required by the Court to sign, seal and deliver—one of them consenting that the balance of said money due to him by the United States should be paid by it and by its treasury department unto the Complainant Charles Borcherling, Receiver, as aforesaid, which consent should be filed with the said Treasurer, and the other of said instruments being an assignment in writing, under his seal, proposed to be made by him of all his property, real and personal, whatsoever and wheresoever, and of all rights and credits to him belonging.

That at the time of service upon him of duly certified copies of said orders respectively, said Rodman M. Price was sick, but of sound mind, and capable physically, of obeying the same; and that after such service, and on or about the eighth of June, Eighteen hundred and ninety-four, he died at his residence in Bergen County, New Jersey.

The Bill further alleges that no letters of administration have been granted upon his estate, and that he died without any enforcement of the order, and without having paid the money, and without having executed the papers above mentioned.

That by reason of the premises the complainants are frustrated and are driven to apply to the Court, and as to the balance of the money in the hands of the Treasurer, they are without remedy; that the officers of the Treasury are, nevertheless, willing to do justice, and neither agree nor refuse to pay the money to the said Borcherling, Receiver, but await the determination of a lawful tribunal of the right of the Receiver; and that the complainants believe that on the decree of the Court of Chancery of New Jersey, that the Receiver is entitled to the balance, and notice thereof

given to the Secretary of the Treasury, said decree will be respected and the balance handed over.

The Bill further alleges that on the ninth day of June, Eighteen hundred and ninety-four, the day after the death of the said Rodman M. Price, these plaintiffs in error, the defendants in said suit, executed a power or powers of attorney, to John C. Fay, of Washington City, counselor-at-law and attorney in his lifetime for said Rodman M. Price deceased, in litigation in respect to drafts, and thereby authorized said Fay to apply to the Secretary of the Treasury to pay to them the balance standing to the credit of said Rodman M. Price, and that they were at that time pressing their claim with the Secretary of the Treasury, insisting that by the true construction of said Act of February 23rd, 1891, said balance of said moneys standing to the credit of said Price, deceased, belonged to them as his heirs-at-law, and that the complainant Receiver had no right in the law thereto. That the Treasury Department, acting under said Act, has credited the said Rodman M. Price upon its books with the sum of about seventy-six thousand dollars as being due to him, and has already paid him the said four drafts and over nine thousand dollars more, thereby reducing the balance apparent of said books to the sum of about twenty-three thousand dollars.

That under a proper construction of said act, and by force of said receivership and the laws of New Jersey, Price's right to all the balance of the moneys passed to the complainant, the said Receiver, and still remains in him; and that in the true construction of the words in said act directing payment to said Price and his heirs, the words "to his heirs" are simply words importing that the moneys be awarded and paid to the legal representatives of said Price in case before such award he had departed this life; that the said receivership having worked a legal assignment by said Price to the Reciver, he is to be held in law as having received said moneys and having made assignment thereof unto the said Receiver.

That there is no right in said children of said Price to make the demands aforesaid; that the contention that they have such right had already been argued before the Court of Chancery and decided against them, and that the action of the children in demanding the balance of the moneys, is in fraud of the Orders of the Court of Chancery; that they had knowledge of said orders, and that the attorney, John C. Fay, also had; and that the application to the Secretary of the Treasury is by way of conspiracy among all the parties including their said attorney Fay.

The bill further refutes the allegation as to the title to said moneys in said Borcherling, and insists that the disposition of the money and adjudication of the writ belongs, in law and equity, to the Court of Chancery of New Jersey; that the children of said Price ought to come to the Court of Chancery and not to the Secretary of the Treasury; and that letters of administration *ad prosequendum* have been granted unto Allan L. McDermott, and that he is thereby made defendant to the bill.

The bill then prays a revival of the original bill, and injunction against the defendants, the present plaintiffs in error, restraining them from making any demand or application to the government of the United States, or the Secretary of the Treasury, or any officer thereof, or from receiving from the United States, or any of its officers, any part of the money still there.

That they be decreed to pay the moneys to the said Charles Borcherling, Receiver, to be by him disposed of under the orders of the Court of Chancery; and that the administrator *ad prosequendum*, or any other administrator or executor, thereafter to be appointed, of Rodman M. Price, may answer, and for other and further relief.

No process seems to have been issued against the said Allan L. McDermott, nor does any further notice appear to have been taken of him in any of the proceedings.

To this bill of complaint the defendants, these plain-

tiffs in error, filed pleas (pages 25 to 37 inclusive) alleging the death of Rodman M. Price on June seventh, eighteen hundred and ninety-four, intestate, leaving his widow and the above named plaintiffs in error, the defendants therein, his heirs at law. That he was not seized at the time of his death of any real estate and that no lands, tenements or hereditaments descended to them or either of them from him, nor were any devised to them or either of them by him. That he had at his death no personal estate or property whatever as they believe, and that neither of them has or hath the possession, ownership or control of any personal estate whatever from their father, the said Rodman M. Price, or any knowledge of the existence anywhere of any such estate. That they had none of them received any moneys from the government of the United States either through their said father, or otherwise, under or by virtue of the act of Congress referred to in the bill of complaint, which act was approved by the President, February 23d, 1891, and of which a copy therein was set out in these words (page 25).

"An act for the relief of Rodman M. Price."

"Be it enacted by the Senate and House of Repre-
"sentatives of the United States of America in Con-
"gress assembled, That the Secretary of the Treasury
"of the United States be and he is hereby authorized
"and directed to adjust upon principles of equity and
"justice the accounts of Rodman M. Price, late purser
"in the United States Navy, and acting navy agent at
"San Francisco, California, crediting him with the sum
'paid over to and receipted for by his successor, A.
"M. Van Nostraud, acting purser, January fourteenth,
"eighteen hundred and fifty, and pay to said Rodman
"M. Price, or his heirs, out of any money in the Treas-
"ury not otherwise appropriated, any sum that may
"be found due him upon such adjustment.

"Approved February 23, 1891."

Alleging that as to all moneys not actually received by said Rodman M. Price in his lifetime from the Government upon such adjustment under said

Act, his heirs were entitled to the same thereunder by special designation in said Act as his heirs, and that the said moneys so remaining unpaid are not in any wise chargeable with the debts and liabilities of said Rodman M. Price or to any of his creditors, and that all such moneys so unpaid to said Price in his lifetime are payable by the Government directly and exclusively to these defendants, the heirs of said Price, deceased, out of any money in the Treasury not otherwise appropriated, and for the benefit of said heirs respectfully, without any claim whatsoever upon the same by the complainant. And that the balance unpaid as aforesaid to Price in his lifetime, and to which the defendants are entitled as aforesaid, which balance the defendant stated to be about twenty-three thousand dollars, is part of the sum referred to in said Act as paid for and receipted for by Van Nostrand, acting purser, January fourteenth, eighteen hundred and fifty. The plea then sets out in detail the history of the transaction, in brief as follows:

That in 1848 Price was assigned to duty upon the Pacific Coast, at California, as purser and fiscal agent of the Government, and acted as such up to December, eighteen hundred and forty-nine, when he was detached by the Government and ordered to transfer all public moneys to his successor or such other disbursing officer as might be designated, and to report at Washington for the purpose of settling his accounts. That in December, eighteen hundred and forty-nine Van Nostrand became such successor and on December thirty-first of that year, Commodore Jones on behalf of the Government, directed Van Nostrand to call on Price and receive from him all books, papers, funds, &c., belonging to the purser's department of San Francisco. That in accordance therewith Price on that day paid to Van Nostrand all the public moneys in his hands and afterwards, and on the fourteenth of January, eighteen hundred and fifty, Price, out of his private moneys and not of the

Government funds, advanced to Van Nostrand seventy-five thousand dollars and took his receipt therefor in these words:

"San Francisco, January 14th, 1850.

"Received from Rodman M. Price, purser, U. S. "Navy, seventy-five thousand dollars, for which I "hold myself responsible to the United States Treas- "ury Department. $75,000.

"A. M. VAN NOSTRAND,
"Acting Purser."

(See page 27.)

That this advance was without the approval and signature of Commodore Jones, his commanding officer, although Price regarded the advance as an accommodation to the Government.

That Van Nostrand failed to account for this money to the Government and never returned it to Rodman M. Price, but appropriated it to his own use. That in settlement of his accounts with the Government this seventy-five thousand dollar loan was dealt with as made without authority. That the matter was referred to Attorney General Caleb Cushing, who gave an opinion dated March 12th; 1854, that the Government was not liable. A copy of this opinion was annexed to the pleas and will be found on pages 29 to 36 of the case.

That afterwards, and in 1891, the Act above referred to was passed, and under it the sum of $76,204.08 was found to be due to Price. That Price in his lifetime received part thereof as aforesaid and to the balance, the defendants as heirs were entitled under the Act.

The bill alleges that the claim was not a lawful claim, for which the Government was lawfully liable, but in view of the fact that the money had been paid or advanced by said Rodman M. Price, deceased, in the belief that it would be an accommodation to

the Government, in the condition of affairs that existed in the early history of California at that time, and in view of the fact that said Price had become old and been in the service of the Government, and purser in the Navy for many years, and also Governor of the State of New Jersey, and that it was equitable and just, apart from the question of the lawfulness of the claim, that he or his heirs mentioned in said Act of Congress should be paid the sum of seventy-five thousand dollars, the Act had been passed and thereunder the adjustment made as above stated.

The plea, after an averment of the truth of these allegations prayed judgment whether they ought to be obliged to answer the bill, and prayed to be dismissed with costs.

An inspection of the opinion of Attorney General Cushing will disclose that after a recitation of the facts he advised that the receipt from Mr. Price of the public money above mentioned by Mr. Van Nostrand was lawful, and the Government liable therefor, but that as to the other moneys paid Mr. Price to Mr. Van Nostrand, they were undoubtedly the private funds of Mr. Price, and that the Government was not responsible for and could not be charged therewith.

On these pleadings the matter was heard before the Chancellor and the suggestions hereinafter stated as having been made to the Court of Errors and Appeals were there made, with the result that the Chancellor, by order dated the 29th of July, 1895, ordered that the pleas be overruled, with costs. (Case, page 37).

From this decree the defendants below, the plaintiffs in error here, appealed to the Court of Errors and Appeals, alleging generally in accordance with the practice in New Jersey as their grievances, the order overruling the pleas with costs and directing them to answer, plead, or demur anew, whereas as they alleged, the order should have been that the pleas do stand, with costs. (See page 38.)

After argument in the Court of Errors the decree below was affirmed. (See pages 39 and 40.)

And in the decree the reason for the sustaining of the decision was given in the following words: "For that the Act for the relief of Rodman M. Price, passed by the Congress of the United States and approved by the President on the twenty-third day of February, eighteen hundred and ninety-one, and set forth in said pleas and each of them did not entitle the defendants below, appellants in this court, though being and claiming as his heirs at law to the payment unto them of the said sum of money mentioned in the said bill of complaint and in said pleas, actually remaining unpaid by the Treasurer of the United States to the said Rodman M. Price at his death, but that said moneys so remaining unpaid are payable to the said Charles A. Borcherling, appointed Receiver in the life of said Rodman M. Price, deceased, as stated in said bill of complaint of the property and things in action belonging to or held in trust for said Rodman M. Price at the date of said order appointing said Borcherling R c iver, mentioned and at the previous time therein mentioned." (See page 40.)

And this decree, by a decree of the Chancellor upon remittitur, was on the nineteenth of June, 1896, made the decree of the Court below. (See page 40).

The opinion of the Court of Errors and Appeals in this cause will be found on pages 52 to 57 of the case, and deals very elaborately with the whole question, and so far as is applicable to the facts of the case embraced in the assignment of error is sufficiently set forth on the syllabus thereto, which will be found on pages 52 and 53, from which it will be seen that the Court held that the Act of Congress pleaded was not the bestowal of a mere gratuity, but the restitution of property which once belonged to him as assets for the liquidation of his pecuniary obligations, and upon its restoration cannot be held to have assumed any new character. That the words, "or his heirs," are simply words of succession and descriptive of his estate in the money found to be due him and used in the statute in the sense of personal representatives, and

intended to secure the moneys to his estate in the event of his death before they were paid.

That the assignment of a claim against the United States ordered by the Court of Chancery to be made by a debtor or his representatives, if he be deceased, to a receiver in aid of proceedings in said Court by a creditor in order to obtain satisfaction of a judgment at law against the debtor is not prohibited by and is not a nullity under the provisions of section 3477 of the Revised Statutes of the United States.

3. That such an assignment to the receiver and assignments to him by operation of law in such proceedings, is an exception to the provisions of section 3477 of the Revised Statutes of the United States requiring assignments of such claims or powers or attorneys to receive the same, to be acknowledged by the persons executing them and to be certified by the officer taking such acknowledgements.

4. That the objects of section 3477 of the Revised Statutes of the United States are that the Government may not be harrassed by multiplying the number of persons with whom it has to deal, and that it might always know with whom it was dealing until the contract is completed and an adjustment and settlement made, and that none of these evils can happen upon an assignment for the benefit of the creditors of a claimant, either expressly ordered to be made by a court having jurisdiction, or resulting by operation of law; and

5. That the Court of Chancery has jurisdiction to determine the right of the distribution of such claim in payment and satisfaction of a judgment debt due from the claimant to his creditors whenever the proper parties are before the court and the point decided be within the issue made by the pleadings.

It will be seen from an inspection of the text of the

opinion that a proper construction of both the Acts of Congress therein referred to, was the principal point of discussion in the cause.

In addition to this question, there were two or three contentions made that were not insisted upon in the subsequent proceedings and do not appear before this Court, all of which, however, were decided adversely to the present Plaintiffs in Error. Namely, that the Receiver appointed by the Court of Chancery had no standing to demand the moneys.

That if the word "heirs" in the act was not to be construed in its technical meaning, but to be construed as next of kin or legal representatives, then they were not proper parties to the suit, as action for moneys of a decedent in the hands of next of kin could be brought only by the Administrator.

That these moneys, if personal estate of the deceased, were not assets, and that therefore these defendants could not be pursued as heirs, by creditors, if the property came to them in any other than their individual capacity.

That there was no debt owing by the defendants to the Complainants.

As has been stated, all these contentions were ruled against the plaintiffs in error, in the Court below and are not before this Court at present and are specified only that the Court may be informed of the history of the litigation.

In accordance with the Statute of the State of New Jersey, General Statutes of New Jersey, Vol. 1 p. 406. Section 176, of the Chancery Act, namely: "That if "the plea or demurrer be overruled, no other plea or "demurrer shall "be thereafter received, but in such "case the defendant shall file his answer to the com- "plainant's bill in twenty days after such overruling, "and if he fail to do so, the said bill shall be taken as "confessed, and the said Court shall thereupon pro- "ceed as directed in the twenty-eighth section of this "act" which twenty-eighth section provides for the filing of pleadings in a cause in regular sequence within the

time then named. The defendants filed their answer to the said Bill of Complaint in which they alleged that they were the only children and next of kin and heirs at Law of said Rodman M. Price, deceased. They admitted the truth of the allegations of the bill in so far as it recited the contents of the original bill and the proceedings thereon had. They denied knowledge as to the reception by said Price, of the money's alleged to have been received by him in his lifetime, admitted that the amounts claimed had been drawn from the Treasury, but alleged a lack of knowledge as to whether they had been received by Rodman M. Price or not, and denied the reception of any part thereof by themselves. They also admitted Rodman M. Price's refusal to comply with the demands of the Receiver, the taking of the proceedings against him for contempt, the judgment of contempt, his illness and his death at the dates named in the bill, without the order having been executed.

They admitted that no Will had been presented and alleged that none was left by him so far as they knew, or had reason to believe, admitted that no letters of administration upon his estate had been issued, alleged that he left no estate so far as they knew or had reason to believe, that nothing had ever come to them, that no property, either real or personal, had ever come to them, or any of them from his estate and that there was no property of his estate to come to them of which they were aware.

They admitted the allegations of the bill that the complainants were without a remedy for the recovery of the money alleged by them to be due from the decedent, if any such were due, and denied their right by any proceeding in that Court to sequester the money in the Treasury of the United States for the reasons thereinafter stated.

As to what was the disposition of the Treasury Department, or whether demand had been made upon them as alleged in the bill, they alleged that they had no knowledge.

They admitted executing, after the death of Rodman M. Price, a power of attorney to John C. Fay, for the purpose of collecting for them the moneys in the Treasury, asserted their right to do so by law, charged that they were then entitled to receive from the Treasury the moneys there remaining, and that they were parcel of the moneys awarded by the Act of Congress set forth in the Bill of Complaint, alleged that at the death of said Rodman M. Price, they became entitled under the act of Congress, set forth in the bill and thereinafter referred to, to all the moneys then remaining in the Treasury as original takers, and that they were advised and charged that there was no jurisdiction in the Court of Chancery to sequester the moneys remaining in the Treasury and awarded under the Act, and that the only persons to whom the same could be legally paid, were these defendants or such persons as might hold an assignment thereof, freely made by them in accordance with, and having all the formalities required by the Laws of the United States.

They denied that the appointment of the Receiver, and the order appointing him, worked a legal assignment by the decedent to the complainant, (Borcherling) or conveyed to him any of the rights of any of the takers, under said Act of Congress.

They admitted the allegations of the bill as to their contention on the argument of the original case, and alleged that it was correct.

They denied the allegations of the bill that they had knowledge of the action of the Court and the orders thereof in the original cause, or that any of them were made known to them other than that they had knowledge of the proceedings in a general way, but that they had any specific knowledge with reference thereto or what orders were being made, or anything other than a general knowledge that a suit was being prosecuted against their father to recover these moneys they denied, and alleged that their action after his death was taken by reason of their belief in their

rights as original takers under said Act of Congress, and alleged that they were advised, and there charged that that was their right.

They denied that their action was in disobedience of the orders of the Court or that they were bound thereby, or that they were in contempt.

They then alleged the facts of the case, setting out the facts substantially as recited in the plea and as herein above recited, and also the Act of February 23rd, 1891, above referred to in extenso, which, for the sake of conciseness I take the liberty of not repeating, but refer the Court to the previous recitation thereof herein, and prayed to be dismissed with their costs.

Annexed to the Bill was a copy of the opinion of Attorney General Cushing, a copy of which is heretofore referred to.

The cause was almost immediately heard on Bill and Answer and a decree therein was made by the Chancellor bearing date the 25th of June, 1896, but not filed until the thirtieth of August of that year, in which the Chancellor decreed in these words:

"That the said defendants and each of them be "and they hereby are perpetually enjoined and re- "strained from making any demand upon, or applica- "tion to the Government of the United States, or the "Secretary of the Treasury of the United States, or any "officer of the said Treasury, or from receiving "from the United States, or its said Secretary of the "Treasury or any officer thereof any part of the money "remaining in the Treasury of the United States at the "time of filing said Bill of Complaint, and which was "awarded to Rodman M. Price, deceased, as in the said "Bill stated or now there remaining, and that the de- "fendants likewise pay to the plaintiffs or their solici- "tors their costs to be taxed in the cause." Page 48.

The decree being, as the Court will perceive an injunction against any application to the Government for the money or receiving the same from the Government and not a decree adjudicating the rights of

either party thereto, or in anywise determining those rights, in short, tying up the money so that the defendants could not apply for or receive it, while at the same time giving the Complainants no decree for its possession.

Under date of November 2nd, of the last named year, the defendants appealed from this final decree to the Court of Errors and Appeals. (Page 49). The Petition of Appeal in which will be found on the same page, and the Complainants answer thereto on Page 50.

The matter was presented to the Court of Errors at the November Term and a decision was handed down under date of January 11th, 1897, affirming the final decree of the chancellor. (Page 51.)

The opinion of the Court, however, was not filed until the 22nd of April, 1897. (Page 67.)

That opinion was very short, and was in these words:

"This appeal from the final decree of the Court of Chancery in this cause brings up for decision the rights of the parties under the Act of Congress set out in the pleadings, and under Section 3477 of the Revised Statute of the United States. These questions having been passed upon in the opinion of this Court on the appeal from the decree of the Chancellor overruling the Pleas of the Defendants in this cause, (35 Atlantic Rep. 1075) the decree now appeared from the reasons there given must be affirmed, with costs. (Page 67).

The opinion of the Court there referred to will be found upon pages 52 to 67 of the case. By a comparison of the dates, the Court will perceive that the opinion overruling the pleas was not filed until late in the November Term, at which the appeal from the final decree was argued, which accounts for the fact that the two opinions are printed together, apparently out of place in the book, but really in the order of the sequence of their dates.

The Court also will perceive by the language of

these two opinions that the question upon which the Court below founded its conclusion was the construction to be given to the two acts of congress therein referred to, and that the local matters raised on the hearing of the pleas, in addition to the federal questions, were not considered in the second opinion, nor necessary to a decision of the case adversely to the plaintiffs in error.

On that opinion a decree was filed on January 11th, 1897, confirming the decree of the Chancellor and from that decree the appeal now before the Court has been taken.

The question before the Court for decision is, therefore, whether the decree of the Chancellor which was affirmed by the Court of Errors and Appeals is erroneous, and it is alleged by the plaintiffs in error that it is erroneous.

First. Because the requirements of Section 3477 of the revised statutes of the United States which are conditions precedent to a valid assignment of the claim in question against the government had never been complied with either by Rodman M. Price in his lifetime or the complainants since his death, in that:

(1) No assignment thereof was freely made.

(2) No warrant for the payment thereof had been issued.

(3) That the assignment ordered against Rodman M. Price did not fall within any exceptions to the rules set up in the statute, namely, assignments in bankruptcy and insolvency, nor assignments by operation of law.

Second That under the act of Congress of February 23d, 1891, the plaintiffs in error, as heirs of Rodman M. Price, were under that act original takers.

Third. That the decree appealed from restrained the plaintiffs in error from the assertion of a right against the government without adjudicating against

that right or conferring it upon the defendants in error.

That the Court of Errors and Appeals is the Court of last resort in New Jersery. See the Constitution of New Jersey, Article VI, Judiciary Section 1. General Statutes of New Jersey, Vol. 1, p. lviii. "1 The judicial power shall be vested in a Court of Errors and "Appeals in the last resort in all causes as heretofore," * * *

SPECIFICATION OF THE ERRORS RELIED UPON.

The plaintiffs in error rely upon all the errors set out in their assignment of errors, (pages 7 to 10) namely:

1. That the decree of the Chancellor (page 48) was affirmed with costs.

2. That the plaintiffs in error were by said decree enjoined from applying to the government, the Secretary of the Treasury, or any officer of the Treasury for the moneys mentioned in the pleadings and from receiving the same or any part thereof.

3. That costs were decreed against the plaintiffs in error.

4. That by said decree it was decided that under the act of Congress of February 23d, 1891, hereinabove set forth, the money therein mentioned was intended to benefit the estate of Rodman M. Price, and to be within the reach of his creditors, and that the heirs of said Rodman M. Price, deceased, were not thereby personally intended to be beneficiaries of the United States by way of gift or gratuity to them as such.

5. That it was by said decree adjudicated that these plaintiffs in error, the heirs of said Rodman M. Price, deceased, were subject to the jurisdiction of the Court of Chancery of New Jersey, in the premises and that that Court could treat them as if they were in possession of the moneys in question in order to compel them to assign it to a Receiver appointed in said suit, or to give effect to such assignment to him by operation of law.

6. That it was in said decree decided that an assignment of the claim of the plaintiffs in error to said moneys made by the decree of said Court against the will of the plaintiffs in error ~~could~~ and, without the formalities required by Section 3477 of the revised statutes of the United States, ~~as aforesaid~~ as valid.

7. That by said decree it was decided that the said Receiver took title to said moneys from said Rodman M. Price deceased, or these plaintiffs in error, by operation of law, and that the title of said Rodman M. Price deceased, or of these plantiffs in error was vested in said Receiver by operation of law,

8. That it was by said decree decided that a transfer of said moneys made to said Receiver against the will of the plaintiffs in errors and without the formalities required by section 3477 of the revised statutes of the United States was a transfer made by operation of law and valid.

9. That in said suit these plaintiffs in error in their pleadings in said cause claimed that under the act of Congress of February twenty-third, eighteen hundred and ninety-one, therein recited, they were entitled to the balance of the said moneys in the Treasury of the United States therein mentioned, as original takers under said act, and said decree adjudicated that they were not such original takers under said act.

10. That these plaintiffs in error in the pleadings in said cause specifically set up a claim under said act last above referred to to a right to receive the moneys therein mentioned from the United States and said decision was against said right so specifically set up and claimed.

11. That in said suit these plaintiffs in error in their pleadings specifically set up and claimed that

under Section 3477 of the revised statutes of the United States no transfer or assignment of said claim for said moneys upon the United States or any part thereof could be validly ordered by said Court against their will, nor without the formalities mentioned in said Section 3477 of the revised statutes of the United States, and said decree decided against said right so specifically set up and claimed by them.

BRIEF FOR ARGUMENT.

From the foregoing statement of the case and specification of errors it will be observed that the case to be adjudicated on this appeal is briefly as follows: The original bill against Price was a creditor's bill which dealt with matters other than the questions now at issue, which questions were first imported into it by the petition mentioned in the bill of revivor in which, amongst other things, the fact of these moneys having been awarded to Governor Price under the act of February 23rd, 1891, was first alleged.

The result of this litigation against Governor Price was the adjudication by the Court of Chancery appointing the said Borcherling, Receiver, directing an assignment by Governor Price, to the Receiver of the drafts then issued and on his subsequent refusal to obey the said orders, granting against him a judgment of contempt of Court for such disobedience. Pending this litigation Governor Price died and the Court will perceive that there was never, so far as the case shows, and as I understand to be the case any final decree made in that cause.

Upon his death, however, the present bill was filed for a revivor of the original suit and for affirmative relief against the defendants, and it is in this case for the first time that any final decree appears to have been made.

It appearing in the case, as it does by the pleadings, (page 44) that these defendants are the heirs of Governor Price, but that they have no assets from him

whatever and are not themselves indebted to the complainants and have no possession, ownership or control of any personal estate from him nor any assets from him by devise, or otherwise, two questions arise on the threshold of the case.

First—As to the power of the Court of Chancery to make a decree at all enjoining the defendants, these plaintiffs in error, in the absence of an adjudication as to the right of the matter, from applying for or receiving from the Government the moneys in question, and

Second—The power of the Court to dispose of these particular moneys in view of the terms of the two acts of Congress above stated.

With reference to the first of these questions it may be urged that that is a question of State jurisdiction and is set at rest so far as this Court is concerned by the adjudication of the State Court. This proposition seems to me to be erroneous, and without arguing it extensively I make the following suggestion, namely,

That so far as these plaintiffs in error are concerned the order for an assignment of the moneys in question was made in an interlocutory proceeding to which they were not parties, with reference to which they were not heard and as to which, not having assets, they cannot be bound as heirs and therefore that that order has no binding effect upon them, and further that there having been no such decree made against them in the original case, there is an equal lack of decree on that subject in the case at bar, and that there is no adjudication on that subject to which they are parties, or by which they are or can be bound.

That the order under which the sequestration is claimed to have been wrought was an order personal to Rodman M. Price, deceased, that it was never obeyed, nor any proceedings taken which, if valid, would carry it into effect, or operate to transfer any title, that at his death no transfer of any title binding upon any other than the parties to that suit was in

existence, and that these plaintiffs in error came into the litigation unaffected by any orders made in the original suit, and that no decree having been made against them in this suit adjudicating the right of the matter against them, a decree enjoining them from claiming the moneys cannot be anything more than brutum fulmen, and is and must be void and of no effect. Nor can it be said that this proposition fails to present a Federal question for the reason that the moneys are moneys in the hands of the Government of the United States, granted under an act of Congress, and their disposition must be of necessity a question over which the courts of the United States are vested with jurisdiction in the last resort, and I respectfully contend, therefore, that for that reason the decree directing the injunction was erroneous, and in such particulars as give to this Court jurisdiction to decree.

With reference to the second proposition, this Court has already on the motion to dismiss this appeal determined that a Federal question was involved, and I therefore will not take the time of the Court in discussing that branch of the proposition further than to refer the Court to the previous decision filed on the conclusion of the Court then read.

The rights of the plaintiffs in error under the acts of Congress above cited.

The decree appealed from starts out with the recitation that the Court is of opinion that the complainants are entitled to the relief prayed in so far as it relates to the collection by the defendants of the moneys mentioned in the bill of complaint and still in the Treasury of the United States and then decrees the injunction above referred to.

While, therefore, the decree fails to make any adjudication of the rights of the parties it will be assumed, I presume, by the Court that it did so for the reasons mentioned in the opinion of the Court of Errors on the argument of the appeal from the decree overruling the pleas, and I therefore address myself

to the discussion of the question therein involved, for unless the Court is held to have based its decree on that reasoning it must be that under the elementary principle, that a court has no jurisdiction to make an order which cannot be executed, the decree must be reversed.

As will be seen from the pleadings the corpus of the claim in suit is a claim against the United States which is not only upwards of forty years of age, and the original bill in which was filed on the thirtieth of May, eighteen hundred and seventy-four, or upwards of twenty years after the alleged debt from the Government to Governor Price arose, and therefore many years outlawed, but was also a claim which had never been prosecuted in the Court of claims and which, by the opinion of the Attorney General of the United States, delivered as early as the year eighteen hundred and fifty-four, was held to be one for which the Government was not responsible and for which it could not be charged, and which, therefore, had its inception in the act of February 23rd, 1891, and was, and of necessity must be, a gratuity from the United States.

It would seem, therefore, to be plain that this claim must be bound and limited by the terms of the act creating it, and be governed by the principles of the Federal law in force.

A glance at the Act of November 23rd, 1891, (pages 25 and 45) will show that this gratuity was two fold.

First: That there should be an adjustment upon principles of equity and justice, of the amount to which he was morally although not equally entitled, and

Second: That when so adjusted the amount should be paid not to said Rodman M. Price, but to said Rodman M. Price or his heirs.

Moreover, this claim thus created was under Section 3477 of the Revised Statutes of the United States made subject to the further provision that all assignments thereof or of any part thereof should be absolutely null and void, unless they were freely made and

executed in the presence of at least two attesting witnesses after the allowance of such claim, the ascertainment of the amount due, and the issue of a warrant for the payment thereof, and further that such transfers, assignments and powers of attorneys must recite the warrant for payment, and must be acknowledged by the person making them before an officer having authority to take acknowedgments of deeds, and must be certified by the officer, and still further, that it must appear by the certificate that the officer at the time of the acknowledgment read and fully explained the transfer, assignment or warrant of attorney to the person acknowledging the same.

Look at the requisites:

1. It must be freely made.
2. It must be freely executed.
3. It must be after the allowance of the claim and the ascertainment of the amount due.
4. It must be after the issuing of a warrant for the payment thereof.
5. It must recite the warrant.
6. It must be acknowledged, and
7. The certificate of the officer must show that the assignor was made fully acquainted with the contents of the assignment and the purport thereof.

Any one of these requisites being lacking, the assignment was void.

If, therefore, there appears to have been in this case no assignment of the rights, either of Price or of any of these heirs, then there was no transfer of title from them of the claim, and if no transfer of title and no legal ownership in either of the defendants in error, then a decree of a Court, and particularly of a State Court, enjoining the plaintiffs in error from collecting these moneys must be without jurisdiction, and if so, erroneous.

The pleadings in this cause not only fail to disclose

that the requisites required by the Statute are present, but do disclose that all but one of them are absent, namely, the allowance of the claim and the ascertainment of the amount due by the officers of the Government. Every other one is lacking. No warrant has been issued; no paper reciting the warrant has been drawn; no acknowledgment has been taken; no certificate of an officer has been made, and above all other things, there is no freedom of will in the matter. On the contrary, Governor Price in his lifetime not only failed and refused to make such an assignment, but carried his resistance to the point of contempt of Court, and submitted to imprisonment, and died under attachment of contempt rather than make the assignment ordered, and these plaintiffs in error, since his death, have with equal resistance refused to do the thing which they are now sought to be compelled to do, and certainly without this freedom of action no valid transfer of their title, whether they get it as original takers or as representatives of their father can be said to have been accomplished.

I respectfully contend that the New Jersey Courts had no power to compel these plaintiffs in error to assign said claim, to collect the moneys and pay them over, or in anywise to part with their rights in the premises in the absence of jurisdiction to operate upon the chose in action itself or to sequester it, and that so following, they had no jurisdiction to enjoin these plaintiffs in error from proceeding to the collection thereof themselves. The theory that the Court may operate upon the persons of the plaintiffs in error cannot be an answer to the fundamental proposition that the claim itself and therefor the control of it, is beyond the jurisdiction of these Courts.

Fortunately, however, this question is not a case of first impression, and this Court has spoken upon the subject in such way as to cover all the branches of the question and leave no doubt as to the rulings of the Court on this proposition in both of its aspects.

The following cases are in point:

St. Paul & Duluth Railroad Co. vs. United States, 112 U. S., 733.

In that case the Lake Superior and Mississippi Railroad Company, had a contract in writing with the United States for carrying the mails. On the 20th of October, 1876, the Postmaster General gave notice to the company of a reduction in its compensation at a rate named, and on August 28, 1878, a further decrease was notified. The services during the first period were rendered by the railroad above named, and during the latter period by the St. Paul & Duluth Railroad, claiming to be the successor to all rights of the former under the contract.

The latter company's title arose under a judicial sale by virtue of a decree of a United States Circuit Court foreclosing a mortgage given by the Lake Superior and Mississippi Railroad Company to trustees to secure its bonds. The mortgage professed to convey all its real and personal property, and franchises. The decree for sale directed a sale of the mortgaged premises. Sale thereof was had and confirmed by the Court and conveyance made to the appellants. Suit was brought for the difference between the contract price and the sums allowed. The Court held that if the former company were suing it would have a right to recover under the authority of cases therein cited, but as to this company, neither the contract itself, nor the moneys collectable thereunder legally passed to the appellants for the reason that the claim was within the prohibition of Section 3477 of the Revised Statutes of the United States, for the reason that the transfer though voluntary in its inception by a mortgage for the security of a debt, was finally completed and made absolute by judicial sale and Mr. Justice Matthews, reading the opinion of the Court, adds that if the statute does not apply to such cases, it would be difficult to draw a line of exclusion which leaves any place for the operation of the prohibition.

Again, in Spofford vs. Kirk, 97 U. S., 484.

Kirk had a claim against the government for supplies furnished to the army during the war of the rebellion. He gave two orders on his agent in favor of third parties for payment out of the funds to be collected from the government for $600 each. Both were accepted, and so accepted, sold to innocent third parties in good faith. A warrant was issued for the amount allowed by the government, and delivered to Hosmer & Co., the attorneys of Kirk. The Assignee demanded the money, Kirk refused to endorse the warrant. Spofford, the Assignee, filed a bill in equity to enforce compliance with the orders and acceptances and to enjoin Hosmer & Co. from surrendering and Kirk from receiving the warrant. The Court held:

1. That the assignments were equitable.
2. But that they were void under Section 3477 of the Revised Statutes, because they lacked one of the requisites, namely, that of a warrant issued.
3. That therefore a Court of Equity had no jurisdiction.

The bill was filed to enforce compliance with the orders and acceptances, and to *enjoin* Hosmer & Co. from surrendering and Kirk from receiving the warrant.

Mr. Justice Strong, delivering the opinion of the Court, said that the complainant's case rests upon the assumption that, coupled with the acceptance of the drawees, they created an equitable lien upon the debt due from the United States to the drawer, exactly the contention, as the Court will perceive, that was set up in the Court of Chancery as the foundation for the decree prayed in the original bill in the cause at bar, and after stating the various arguments of counsel he adds, however stated, the equitable effect of the orders and acceptances independent of any statutory prohibition, if they had any effect, when they were drawn

was to transfer a portion of the drawers claim against the United States to the payees, and after citing Section 3477, above referred to, he holds that the matter is within the provisions of that Act. He uses this language:

"It would seem to be impossible to use language more comprehensive than this. It embraces alike legal and equitable assignments. It includes powers of attorney, orders, or other authorities for receiving payment of any such claim or any part or share thereof. It strikes at every derivative interest, in whatever form acquired, and incapacitates every claimant upon the government from creating an interest in the claim in any other than himself." Page 488.

And on page 490, he uses this language, very much in point in the present case.

"We cannot say, when the statute declares all transfers and assignments of the whole of a claim, or any part or interest therein, and all orders, powers of attorney, or other authority for receiving payment of the claim, or any part thereof, shall be absolutely null and void, that they are only partially null and void, that they are valid and effective as between the parties thereto, and only invalid when set up against the government."

The lack of requisite in that case, the Court will perceive, was simply that the assignment was made before a warrant had been issued, The assignment was voluntary and possessed the requisites in all other respects.

United States vs. Gillis, 95 U. S. 407.

Ryan had a claim against the United States for cotton seized by the Government. He transferred it to Gillis. Gillis sued in his own name in the Court of Claims. He died pending suit, and his wife was appointed Administratrix and admitted to prosecute. Judgment by the Court of Claims was given in her favor. The Government appealed. The Court held:

First:—That if the assignment was inoperative, a suit could not be maintained in the Plaintiffs' name.

Second:—That there was no right of assignment at common law of a claim against the Government, and no law of Congress authorizing it.

Third:—That the act of February 26th, 1853, now Section 3477, of the revised statutes universally prohibted such an assignment excepting under strict formalities detailing them in accordance with the statute; and reversed the judgment and dismissed the petition.

On this subject of this particular statute the Court, Mr. Justice Strong reading the opinion, used this language: "We think, therefore, that the Act of 1853 "is of universal application, and covers all claims "against the United States in every tribunal in which "they may be asserted. And such, we think, was the "understanding of Congress when the revised statutes "were enacted. In the revision, the Act of 1853 was "included and re-enacted. Sect. 3477." And with reference to the distinction sought to be drawn between the operation of a decree upon the person of the litigant, and that upon the Government itself, the learned Justice used this language: "It has been "argued on behalf of the claimant in this case that "this Act (the act of 1853) is applicable only to claims "asserted before the Treasury Department. * * * "But it is an unwarantable assumption to assert that "Congress had in mind only claims presented to the "Treasury Department." And after stating that many claims were set up in different methods, the Court said: "That Congress had all such claims in "view, and intended to prevent their assignment, and "debar any assignee from setting them up, is, we think "altogether probable." And added later, "nothing "that can justify our holding that when Congress "said all transfers or assignments, partial or entire, "absolute or conditional, of claims against the United

"States shall be null and void, they meant they should "be in operation only when presented to the account- "ing officers of the Treasury, but effective when pre- "sented everywhere else."

In the case at bar, it was contended, and held in the Court of Chancery and in the Court of Errors, that the assignment of a claim against the United States ordered by the Court of Chancery to be made by a debtor or his representatives to a Receiver, in aid of proceedings in said Court by a creditor, was not contrary to the provisions of this statute; that such an assignment to the Receiver, and assignments to him by operation of law in such proceedings are exceptions to the provisions of the statute; that the evils sought to be remedied by such an Act could not happen by such an assignment, and that the Court of Chancery had the jurisdiction to determine the right of distribution of such claim; and that opinion was founded upon an earlier adjudication by the same Court, not by way of final decree as has been stated, but by way of interlocutory order, decreeing Governor Price, against his will, to make an assignment of the claim in suit, and the ruling was contended for and held upon the ground that a Court of equity had a right to operate upon the person of the debtor and to compel him to do that which, according to their opinion, in equity he ought to do.

Everyone of these contentions is met and answered by this Court in the cases above cited.

In the St. Paul case, although the assignment was freely made, it was held void because it was completed and made absolute by judicial sale, although there was no doubt about the equity of the claim.

In the Spofford case, the contention that the orders drawn by the payee upon his agents, and exhibited by them, created in equity an irrevocable appropriation of their contents, are, as to the claim against the government, expressly negatived.

In the same case it was particularly held that such

an assignment, even when voluntarily made before a warrant had been issued, was void, and that the statute incapacitated every claimant upon the Government from creating an interest in any other than himself, and that its command was so comprehensive that it did not include merely an effort to operate upon the Government, but also an effort to operate upon the parties.

And in the Gillis case, that the provision that such transfer should be null and void applied not only when presented to the accounting officers of the Treasury, but was effective when presented everywhere else.

In the Gillis case, the prohibition was applied to the United States Court of Claims, the statute creating which was held not to have repealed the act invoked.

In the Kirk case, it applied to a Court of equity.

And in the St. Paul case to a Court of equity, and touched every branch of the subject. It held not only that the claim could not be enforced upon application to the Treasury Department, and could not be enforced by a suit at law or in equity, but that being void it could not be made the subject of an injunction against the original payee in his application for its payment.

It seems to me to be impossible to conceive of a case more fully covered by the decisions of this Court, nor one in which every contention of the Defendants in Error and the Court below has been more fully negatived than in the case at bar.

My learned friends urged below, and the Court held, and they will, no doubt, urge here, that this case falls within the class of cases which have been held by this Court to be exceptions to the provisions of the act, namely, voluntary assignments in bankruptcy, or insolvency and by operation of law:

Irwin vs. The United States, 97 U. S. 302.
Goodman vs. Niblack, 102 U. S. 556.

but in each of these cases the Court will perceive that

the ruling was carefully hedged, and that the state of facts is entirely different from the case at bar or the other cases hereinabove cited.

In Irwin's case, the claim was held to be transferrable because it was included in an assignment in bankruptcy, founded upon a voluntary petition of the claimant, and included in a schedule of assets thereto annexed.

The Bankruptcy Act, itself an Act of Congress, under which it arose, declared that all of the estate, real and personal, of the bankrupt, and all of his rights in equity and in action, should vest in the assignee. The claim itself was a valid one against the United States, over which the Court of Claims has jurisdiction, but which was barred by a two years statute of limitation, and the act of Congress reviving it merely removed the bar of that time limit.

The Court held that it was an asset under the circumstances, and that Section 3477 applied only to cases of voluntary assignments of demands against the Government, and not to cases where there had been a transfer of title by operation of law. But lest there should be any misunderstanding as to the meaning of the ruling, the Court defined the words "operation of law" to mean the passing of claims to heirs, devisees, or assignees in bankruptcy or insolvency.

Now the case at bar is not within, but is without the exception in the ruling of that case. This claim was never a legal one, neither could it have been collected in a Court of equity. It was not based upon considerations that would be valid against individuals. It did not pass by an assignment in bankruptcy or insolvency; it was not assigned, or included in schedules in insolvency; it was not voluntary; it was not a transfer by operation of law; but was like that in the St. Paul case above cited, sought to be effected by judicial action. It was not an assignment for the benefit of creditors in general.

This Receiver was appointed under section 93 of an

Act of the Legislature of the State of New Jersey, entitled "An Act respecting the Court of Chancery," Revision approved March 27, 1875, General Statutes of New Jersey, Vol. 1, page 389, in which, after having provided that when an execution against the property of a defendant shall have been issued on a judgment at law, and shall have been returned unsatisfied, leaving an amount remaining due exceeding one hundred dollars, the party suing out such execution might file a bill in Chancery to compel discovery; and after setting out the powers of the Court, and after certification to the Court of the evidence taken, the statute uses this language: "And thereupon it shall be lawful for the said Chancellor to appoint a Receiver, pendente lite, of the property and things in action belonging or due to or held in trust for said debtor as aforesaid, who thereby shall receive authority to possess, receive, and in his own name, as such Receiver, sue for such property or things in action; and the said Chancellor may order said judgment debtor to convey and deliver to such Receiver all such property and rights in action and the evidence thereof." From which it will be seen that this Receiver was not appointed in insolvency proceedings general to all the creditors of the debtor, but solely for the benefit of the one creditor, invoking the aid of the Court, and might be the result of contumacy on the part of a solvent debtor, and might operate to assign to one out of many creditors of an insolvent debtor the whole of the credits of his estate.

The very terms of the Act take the case out of the exception mentioned in the decision last quoted.

It seems to me that the State Court was in error upon the data before it, in holding under the provisions of this Act that any right passed to this Receiver, but that being a matter for adjudication below, I make no argument upon it here further than to cite the statute for the purpose of showing that it is not a bankruptcy or insolvency act, nor within any of the

reasons laid down by this Court in their decisions as to the exception to the rule of construction of Section 3477.

Note also the distinction between the St. Paul case and the Irwin case. Under the former, the transfer was made by judicial sale—in the latter by assignment in bankruptcy. The former was held to be void under the act, the latter to be good; and in the St. Paul case the Court uses this language: "If the "statute does not apply to such cases, it would be "difficult to draw a line of exclusion which leaves any "place for the operation of the prohibition." (Page 736).

So in the Goodman case above cited, the assignment was sustained, but only because it was a voluntary assignment in insolvency, and therefore on a parity with an assignment in bankruptcy, and also because it was an assignment of all his effects.

Without criticising the danger which is likely to arise, in the construction of statutes, by the efforts of Courts to do equity, may I not respectfully say that it seems to me the Court has gone as far in this line as it is safe to go in the consideration of this statute, if it is to be permitted to retain any force whatever. The question is not, is the Law a wise one—but is, what does it enact?

Other cases where this Act has been considered were cited below, but none of them applied to the case before the Court.

Baily vs. United States, 109 U. S. 432, was a case where the claimant had made a voluntary assignment of his claim, and the Government officers had recognized it and paid on it, and the ruling was that the original claimant would not be allowed to set up this statute against it.

In Hobbs vs. McClain, 117 U. S. 567, the plaintiffs were partners in a contract with the Government, taken in Peck's name. The money was recovered by Peck's administrator.

Prior to Peck's death, he had made an assignment in insolvency for the benefit of creditors.

After the judgment in favor of Peck's administrator, this assignee collected the money and sought to distribute it to Peck's creditors. The ruling was that the partners were entitled to it.

The question was not as to this statute, but was as to whether money already col ected, and in the hands of Peck's assignee, should go to his general creditors or to his partners who owned the money.

Freedman Savings Co. vs. Shepard, 127, U. S. 494. The ruling in this case was like the Bailey case, namely, that the Government having recognized and paid on the assignment by the assent of the assignor, the assignor was estopped from suing the Government, on the ground of the nulity of his own act.

The adjudication of this Court stands out clearly on these three lines:

First.—That under this Act no man can transfer to another a claim against the Government in such a way as to give the other a legal right of action against the Government for the recovery thereof, either at law or in equity, without all the formalities required by the Act, that transfer by the action of the Court is not a legal or valid transfer, and further, that the Courts having no jurisdiction in such case to recover the money from the Government, have no jurisdiction upon the person of the debtor by injunction or otherwise.

Second.—That transfers by assignments in bankruptcy or insolvency, when of all the assets, for the benefit of all the creditors, and assignments by operation of law, are exceptions to the statute, but that assignments by decree of a Court are not assignments coming within any of the exceptions and,

Finally.—That assignments which have been executed and recognized by the Government officials, and the money paid thereon, will be held to create an estoppel against the assignor when asking to recover it a second time; and there is no

case that I can find in which the construction of the statute has been modified in any respect, beyond the ones I name.

This case, therefore, does not come within any of the decisions under which this decree might be sustained. The fund in issue is a claim against the Government, for which no warrant has been issued. The owners of that claim are either Governor Price, his legal representatives, or these defendants as his heirs.

The groundwork of the claim on which the defendants in error base their contention is an order of the Court in an interlocutory proceeding (not by final decree), commanding an assignment of the claim by Governor Price before his death never consummated by compliance on the part of the Governor or those now before the Court, or any other person. It lacks the following requisites of validity prescribed by the Act:

First—Freedom of will.

Second—A written document.

Third—Witnesses.

Fourth—The issuing of a warrant by the Government.

Fifth—A recitation of such warrant.

Sixth—Acknowledgment before an officer.

Seventh—A certificate by the officer that he has read and explained the transfer to the grantor.

With reference to the plaintiff in error, the parties now before the Court, every one of these requisites is also lacking, and if every other requisite were decreed by the Court and enforced by process of attachment or otherwise, the paper would still lack the element of freedom of will, for none of them would freely execute it, and if any of them did execute it he would do so under duress; and without this element of freedom it would be void, and it is now void for lack of each one of these requisites.

Moreover, the complainants themselves in their bill admit this contention, for they allege that they are

without remedy, and that they have no equitable remedy elsewhere than in the Court of Chancery—a Court which has no jurisdiction to make the Government of the United States a party to any action or to enforce any decree it might make against it, or against moneys in its hands.

But in addition to the foregoing arguments based upon section 3477 of the Revised Statutes, I respectfully submit that the plaintiffs in error are original takers under the act. The language of the act is (see page 26 of the case), "And pay to said Rodman M. Price, or his heirs." The words are not "his executors or administrators," which would imply a general use, nor "Rodman M. Price, or his assigns," which would import transmissible qualities by conveyance; but they are "Rodman M. Price, or his heirs."

It is a fundamental rule of construction that words are to be used in their customary sense, if intelligible, and that in the absence of ambiguity in the language used, no exposition shall be made which is in opposition to the expressed words.

The word "heirs" has a well understood, often defined, accurate meaning. It applies to those, who, upon the death of a person intestate become the owners of his lands or other corporeal hereditaments. In this case it applies to the children of Governor Price, and it fits nobody else. It does not include administrators, executors, doweress or creditors. It is a personal provision for Governor Price, if he lives, but only for his heirs if he does not. It confers a gratuity—it does not pay a debt.

It will not admit of any other construction. It cannot be treated as it was by the Court below, namely, as a provision against death before the day of payment, and used in the sense of personal representatives, the thing dealt with being personalty, and to secure the money to his estate in the event of his death before the moneys are paid. And if for no other reason, for the reason that it was money paid into the hands of the Governor that was not legally owing to

him, and which could not be taken from him in any way excepting by his voluntary assignment under the statutes of bankruptcy or insolvency, voluntarily instituted by him.

The Governor had grown old in years; had been in the service of the Government for many years. He had been Governor of the State of New Jersey. He had been out of the money for many years. He had, in good faith, advanced it, as he believed, to the Government. It was not a legal claim, but the Congress of the United States was grateful, and desired to reimburse him in such a way that it would benefit him, or, in case of his death, his children. It cannot be presumed that the Congress of the United States, made up of men, many of them eminent in the nation, great numbers of them lawyers, could have been mistaken as to the meaning of the word they used.

I apprehend that this Court will not undertake to make a forced construction of an Act of Congress surrounded with the circumstances made known in this case. In the construction of a will, where the intent of a testator is evidently clear, Courts have gone to great lengths in their effort to effectuate that intention when ambiguously expressed, but I know of no case other than this where such an effort has been made use of in the construction of a statute affecting only individuals.

I submit to the Court that the rule of law which requires that words should be constructed in their ordinary meaning ought not to be violated in this case, and that there is no necessity for a forced construction, sufficient to justify the Court in resorting to it.

I respectfully submit, therefore,

First:—That under the language of the Act of 1891 these defendants are original takers of the fund in question, in so far as it was not collected by Governor Price in his lifetime.

Second:—That nothing has transpired in the proceedings to take away the title to the moneys in question either from Governor Price or the plaintiffs in

error, and that the claim against the Government has never been legally transferred, as to ownership, to the defendants in error or either of them, but remains now where it was placed by the Act of 1891.

Third.—That there being no jurisdiction in the Court of Equity to operate upon the fund or in anywise to aid the defendants in error in its collection, or to transfer its ownership, that it has no jurisdiction to operate upon the persons of the plaintiffs in error by injunction in the premises; and

Finally.—That the decree below should be reversed with costs, and a decree entered directing the payment of the moneys to the plaintiffs in error.

Supreme Court of the United States.

RODMAN M. PRICE ET ALS.,
PLAINTIFFS IN ERROR,

v.

ANNA M. FORREST ET AL.,
DEFENDANTS IN ERROR.

No. 105.

In Error to the Court of Errors and Appeals of the State of New Jersey.

BRIEF OF JOHN C. FAY FOR THE PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

This is a writ of error to the Court of Errors and Appeals of New Jersey to reverse a decree of that court perpetually enjoining the plaintiffs in error from applying to or receiving from the Secretary of the Treasury an amount awarded to them by an act of Congress approved February 23, 1891.

The bill of complaint, which is styled "a bill of revivor and original bill in the nature of a supplemental bill," was filed in 1894 by Anna M. Forrest, administratrix of

the estate of Samuel Forrest, and Charles Borcherling, receiver in the suit of *Forrest* v. *Price*, to which this bill is a bill of revivor. The bill in substance sets out that, in 1857, Samuel Forrest, the intestate of one of the defendants in error, obtained judgment in the Supreme Court of New Jersey against Rodman M. Price, the ancestor of the plaintiffs in error, for some $17,000; that in 1874, seventeen years after the recovery of the judgment and fourteen years after the death of Samuel Forrest, this defendant in error was appointed administratrix of his estate and filed a bill against said Price to reach some interests in some real estate in Bergen County, N. J., claimed to belong to him, and his interest in a judgment against one Scott and Keyes recovered by him in the Supreme Court of New York. To this bill an answer was filed denying any interest in the real estate, and setting up that the judgment really belonged to Keyes, Price's judgment debtor in the New York judgment, who had years before settled the claim with Forrest. Thereupon the defendant in error dropped the suit, or, as the bill alleges, allowed it to sleep, for another period of a little over seventeen years, when, in 1892, she filed a petition alleging that in an accounting lately had between the United States and Price, the United States was about to pay him $45,000 in Treasury drafts payable to his order, and praying that he be enjoined from endorsing them till the further order of the court, that a Receiver be appointed and that he be ordered to endorse and deliver them to the Receiver; a temporary injunction was issued and a rule to show cause. The bill further charges that Price, as late purser in the navy, received drafts aggregating $45,000 as such late purser, U. S. N., and so endorsed them and received the proceeds between Sept. 5 and Oct. 3, 1892. That on Oct. 3, 1892, he filed his answer to the rule to show cause and the petition,

averring that the Forrest judgment had been paid and settled, and that the money coming to him from the Government was not amenable to complainant's claim even if valid, or could be lawfully paid to a Receiver. The bill then charges that the Forrest judgment was a confessed judgment, and then without further determination of the issue of payment set out in the answer, Mr. Borcherling. defendant in error, was, on Oct. 10, 1892, appointed Receiver in accordance with the prayer of the bill, of the "property and things in action" belonging to Price, particularly the four drafts described, "to hold subject to the further order of the Chancellor." The bill then avers the refusal of Price to turn over the drafts, his attachment for contempt, and an order on the 18th of May, 1894, adjudging him guilty of contempt, fining him $50, and ordering him to pay to the Receiver the money received by him within five days after service of copy of the order; that the order was served May 28, 1894 (making the five days expire June 2, 1894), and that Price departed this life June 8, 1894, without having complied with the order.

The bill further charges that this $45,000 was awarded to Price under the provisions of the Act of Congress approved Feb. 23, 1891, but on reconsideration of its action, by the officers of the Treasury Department, a further sum of $31,000 was about to be paid to Price, and upon such showing the Chancellor, as part of his order of May 18th, 1894, ordered said Price to execute, under his hand and seal, a paper writing consenting that the aforesaid balance should be paid to Borcherling, Receiver, and file it with the Treasurer of the United States, and also another instrument in writing assigning all of his property, real and personal, and all his rights and credits to Borcherling, Receiver,—neither of which papers was executed by Price,—thus ordering into the hands of the Receiver,

to respond to a disputed claim of $17,000, not only $76,000 in cash, but also everything else, real, personal and mixed, belonging to Price.

The bill then charges that the plaintiffs in error are seeking to collect this balance, which had been still further reduced by payments to Price to about the sum of $22,000, claiming it in their own right under the Act of Congress; and the bill, contending that the act bore no such construction, and that the Receivership worked a valid legal assignment of this claim against the United States to Borcherling, the Receiver, *pendente lite*, sought to enjoin perpetually the plaintiffs in error from demanding or receiving payment from the United States. To this bill the plaintiffs in error filed pleas setting up the Act of Feb. 23, 1891, (p. 25, Record) and claiming that by virtue of its provisions, upon the death of Rodman M. Price, without having received the payment therein directed, the money became theirs by virtue of their special designation in the act.

That the allowance made by Congress in said act was not in liquidation of any legal claim of their father, but a gratuity bestowed on him, or in the event of his death before the provisions of the act could be carried out, on his heirs, and they set up the facts out of which the allowance grew, together with the action of the United States, through its Attorney-General, showing it to have been neither a legal nor equitable demand. These pleas were overruled and an answer filed wherein they reiterate their contention in the pleas and set up the non-assignability of a claim against the United States. The cause was heard on bill and answer, and a final decree perpetually enjoining the plaintiffs having been passed (R., p. 48) and affirmed (R., p. 68) by the Court of Errors and Appeals, this writ was sued out.

The foregoing statement includes much that is not necessary to consider under this writ, but it was deemed best to set it out as explanatory of the litigation.

Assignment of Errors.

1. The court erred in holding that the plaintiffs in error were not beneficiaries of the United States under the act of Feb. 23, 1891.

2. That the allowance of the $75,000 by said act inured to the benefit of the estate of Rodman M. Price, deceased, as assets liable for the payment of his debts.

3. That the appointment of Borcherling as Receiver in the chancery suit of *Forrest* v. *Price* worked an assignment.

4. That the court below had jurisdiction to divert the appropriations made by the said act from the beneficiaries named therein, or to intervene between the United States and its purser in the adjustment of their accounts.

5th. In enjoining the plaintiffs in error from receiving the funds awarded to them under said act.

ARGUMENT.

The money coming to the plaintiffs in error or to their ancestor, Rodman M. Price, arose, as is developed in the pleadings, from the direction by Congress to the Secretary of the Treasury to credit the sum of $75,000. That part of the act was mandatory and gave a right that did not exist before. By reference to the circumstances of the case, it will be seen that it was a donation by Congress of this sum. Price had no legal or equitable claim to it. If he had a legal claim to it no remedial act would have been necessary, for the accounting officers could have extended

the credit, and the law officer of the United States, Attorney-General Cushing, had so held. That it was not an equitable claim Justice Grier, in the suit of the United States *v.* Price, in the U. S. District Court of New Jersey, in 1857, had decided (see charge of Justice Gier, Appendix 2). The facts were that Governor Price, without authority from any one, had advanced to an acting officer of the navy his own private funds. That officer had no authority to bind the Government in its receipt, and he never expended it for the benefit of the United States. The United States never received it, and could not, in the language of the court below, *restore it*, for they never had it. The case Emerson's heirs *v.* Hall, 13 Peters, 222, exhibits the difference between the payment of a claim and the grant of a donation. But another pregnant fact is that both the Senate and House committees that reported this legislation struck out the words "or assigns" from the bill, and that amendment was adopted by both houses. (See Senate bill 2276, Appendix 1.) Unless these words mean what they say, they were entirely unnecessary, for the act of 1846 (9 Stat. L. 41) would have fixed the person to receive the money had Congress not fixed it in the act.

SECOND.

That the appointment of Borcherling as Receiver in the chancery case of Forrest *v.* Price worked a legal assignment of Governor Price's interest, in view of the statutes forbidding such assignments, is certainly untenable. This act authorized an adjustment of accounts between the United States and its officer. It was designed to close the accounts of that officer on the books of the Treasury, but this decree proposed to step in between the Government and its officer, arrest the settlement, and direct the action of the

Secretary of the Treasury as to whom the fund should be paid. It was, in effect, to garnishee the pay and other allowances of an officer of the navy in the hands of the United States. If that can be done, there is no reason why public policy should forbid garnishment in the hands of the United States at law. All the evils sought to be avoided by that rule of public policy are present here. Not only that, but all the evils sought to be remedied by section 3477 R. S., forbidding assignment of claims, are present if confessing a judgment and appointing a Receiver works an assignment. If such a transparent and shallow device can overcome the statute, it becomes a dead letter. If the contention of the defendants in error is correct, to wit, that they have a valid legal assignment of the claim, there would be no need of this proceeding; their remedy would be against the United States either by mandamus or suit in the Court of Claims.

The case of St. Paul & Duluth R.R. *v.* U. S., 112 U. S. 733, seems to be decisive against the contention of the defendants in error.

JOHN C. FAY,
of Counsel with Plaintiffs in Error.

APPENDIX No. 1.

[Calendar No., 1624.

51ST CONGRESS, 1ST SESSION.

S. 2276.

[REPORT No. 1339.]

IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1890.

Mr. BLODGETT introduced the following bill; which was read twice and referred to the Committee on Naval Affairs.

JUNE 11, 1890.

Reported by Mr. CAMERON with amendments, viz: Omit the part struck through and insert the part printed in *italics*.

A BILL

For the relief of Rodman M. Price.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury of the United States be, and he is hereby, authorized and directed to adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting navy agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January fourteenth, eighteen hundred and fifty, and pay to said Rodman M. Price, *or* his heirs, ~~or assigns,~~ out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment.

APPENDIX No. 2.

[*From the Trenton True American, March* 31, 1856.]

UNITED STATES CIRCUIT COURT.

SATURDAY, MARCH 29.

UNITED STATES OF AMERICA *v.* R. M. PRICE AND ANOTHER.

Charge of Judge Grier.

At the opening of the court this morning, Mr. Justice Grier proceeded to charge the jury in this case. We can give only a synopsis of it.

After stating that the action was brought on two official bonds of R. M. Price, as purser in the navy, each for $25,000, one bearing date the 22d of February, 1841, and the other the 31st of December, 1844, the learned judge disposed of two legal points taken by the defendant's counsel. The first point was, that the bond of 1841 had been rendered void by the alterations made in the duties of purser by the act of Congress of August 26, 1842, and the execution of a *new* bond under the act; the second point was, that the duties for which purser Price was detailed to California in December, 1848 (where the alleged defalcation is charged to have occurred), were extra official, and therefore his sureties were discharged. The judge decided against the defendant *pro forma* on account of these points for the purpose of having a verdict on the merits of the case, which was desired by both parties.

We have to deal, then, continued the judge, only with the question of fact, whether R. M. Price is a debtor to the Government or not. This is the important question, gentlemen of the jury, for you to try; and it is a question with regard to which the responsibility lies mainly on you.

It is our duty to lay down to you the general rules and principles by which you are to be governed, but it is yours to decide the fact.

The Government charges Mr. Price with a balance of $77,818.42. He claims certain allowances, which, as he contends, brings the Government in debt to him. These allowances consist of only four or five items.

1st, for disbursements to the amount of $31,835.45, the vouchers for which were lost by the burning of the steamer, on which he had taken his passage up the Alabama river on his return; 2d, for the salaries of his two clerks, amounting respectively to $639.45 and $514.91, which have never been allowed; 3d, for $45,000 Government moneys, paid over to his successor, A. M. Van Nostrand, December 31, 1849; 4th, for $75,000, his own private funds, paid over to said successor, for which Van Nostrand, by his receipt, agreed to account to the Government.

As to the last item, of $75,000, my charge to you is, that it cannot be allowed. Being private funds, if they were squandered by Van Nostrand, and not actually paid for the use of the Government, they cannot be charged against the Government. Had Van Nostrand applied them to Government purposes, then the Government would have been responsible to Mr. Price for them, but not otherwise.

The question for you to decide will be as to the validity of the remaining items claimed.

* * * * * * *

Verdict.

The jury, on Saturday afternoon, came into court and rendered a verdict for the defendants, and that the United States are indebted to the defendant, R. M. Price, in the sum of $195.39.

Supreme Court of the United States.

October Term, 1896.

RODMAN M. PRICE *et al.*,
Plaintiffs in Error,
vs.
ANNA M. FORREST, *Adm'x, et al.*,
Defendants in Error.

No. 797.

MOTION TO DISMISS OR TO AFFIRM.

CORTLANDT PARKER,
RICHARD WAYNE PARKER,
FRANK W. HACKETT,
Counsel.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

INDEX.

Motion to dismiss or affirm,	[illegible]
Brief,	[illegible]
Affidavit of service of motion, &c.,	7
Extract from Constitution and Statutes, N. J.,	8
Bill,	9
Plea,	20
Memoranda of proceedings,	23
Opinion (head notes),	25–[illegible]
Answer,	26
Final decree of Chancellor,	27
Final decree of Court of Errors and Appeals,	28
Opinion,	29
Assignment of errors,	29
Bond,	33
Citation,	34
Writ of error,	35
Vote of Court of Errors and Appeals,	37

POSTSCRIPT.

The papers for this motion had to be prepared and sent off in haste in order to get service in season to bring on the motion at this term. It so happened that a copy of the record was not accessible at the moment; and consequently one or two slight inaccuracies of statement appear in the brief, for which the indulgence of the court is asked that they may be here corrected, as follows:

Of the plea it should have been said that defendants asserted that the Act gives them the money because they are children of the late Rodman M. Price, and thus original takers under the word "heirs." Moreover, it is not the *plea* that sets up the statute provision as to assignments; but this defense against our bill of injunction, if it may be said to be set up at all, is in the *answer*.

The contention of defendants should have been stated as not only that Congress meant to make a gift (as in Emerson *vs.* Hall, 13 Pet., 409), to their father, but by the terms of the act to his heirs as a class, and not to legal representatives.

Our position is that the statute plainly employs the word "heirs" in the sense of "legal representatives," Price being a man well advanced in years; that a debt was determined to exist which Congress desired to pay, and had directed to be ascertained; that such ascertainment took place; that part of the money was paid, Price using it in contempt of the New Jersey court, and that by operation of the law of the State an assignment had been made in his lifetime, of what remained and of Price's right to it to Borcherling, receiver.

The decision in 6 Dickinson, 25, settled that. The court will respect the adjudication by which it was decreed not

that the money should be paid to the receiver, but that it was *payable* to him.

The State court in its final decree decides nothing more than that the heirs of Price cannot now receive this money as original takers, the amount having been credited to Price in his lifetime; and the right to collect the balance having passed by operation of law to the receiver before the death of Price.

The decree appealed from is a perpetual injunction founded upon the plain and unquestionable meaning of the Act of Congress; and there is nothing else before the court, in the record, than the construction of that Act.

CORTLANDT PARKER,
RICHARD WAYNE PARKER,
FRANK W. HACKETT,
Counsel, etc., for the purposes of this motion.

On account of its length, the text of the opinion of the Court, disposing of the plea is omitted. See page 25. We have printed, however, the head notes which form a part of the record. The case is reported at 35 *Atlantic Reporter*, 1075, and 54 *N. J. Equity*, 669.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

RODMAN M. PRICE, FRANCIS PRICE, MADELINE PRICE, GOVERNEUR PRICE, and E. TRENCHARD PRICE, Plaintiffs in Error, *vs.* ANNA M. FORREST, Administratrix of SAMUEL FORREST, Deceased, and CHARLES BORCHERLING, Defendants in Error.	No. 797.

MOTION TO DISMISS OR TO AFFIRM.

Come now the defendants in error and move the court to dismiss the writ of error in this case for want of jurisdiction, because the said writ purports to have been allowed by Alexander T. McGill, "Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in all Cases in the State of New Jersey," whereas the said McGill was not and is not Chief Justice or Judge or Chancellor of the said court rendering the judgment or passing the decree complained of in said writ of error; and was without authority to allow a writ of error in the said proceeding; and because the said writ has not been allowed either by the Chief Justice, or Judge, or Chancellor of the court rendering the judgment or passing the decree complained of, or by a Justice of the Supreme Court of the United States; or, if the writ of error shall not be dismissed, that the decree of the said Court of Errors and Appeals be affirmed, on the ground that although in the opinion of this court the record may show that this court has jurisdiction, it is manifest that such

writ of error was taken for delay only, and that the question on which jurisdiction depends is so frivolous as not to need further argument.

CORTLANDT PARKER,
RICHARD WAYNE PARKER,
FRANK W. HACKETT,
Counsel for ANNA M. FORREST, *Administratrix, and* CHARLES BORCHERLING, *Receiver, for the purposes of this motion.*

To BEDLE, MCGEE & BEDLE, *Solicitors for the Heirs of* RODMAN M. PRICE, *Plaintiffs in Error:*

Please take notice that on the 10th day of May, A. D. 1897, the motion, of which the foregoing is a copy, will be submitted to the Supreme Court of the United States for the decision of the court thereon. Annexed hereto is a copy of our brief or argument in support of said motion.

CORTLANDT PARKER,
RICHARD WAYNE PARKER,
FRANK W. HACKETT,
Counsel for ANNA M. FORREST, *Administratrix, and* CHARLES BORCHERLING, *Receiver, for the purposes of this motion.*

BRIEF.

This is a writ of error taken to the Court of Errors and Appeals of the State of New Jersey to secure the reversal of a decree of that court perpetually enjoining certain persons, claiming to be the heirs of the late Rodman M. Price, from claiming and receiving from the Treasury of the United States about $22,000, being a balance due on the books of the Treasury upon the accounts of the said Rodman M. Price, late Purser U. S. Navy, adjusted under Act Feb. 23, 1891.

The following is the Act of Congress upon which there became due and payable to the said Price the sum of $75,000:

"An Act for the relief of Rodman M. Price.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury of the United States be, and he is hereby, authorized and directed to adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late Purser in the United States Navy, and Acting Navy Agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, Acting Purser, January fourteenth, eighteen hundred and fifty, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment.

"Approved February 23, 1891."

The Treasury officials under this act stated the accounts of Price, crediting him with the sum of $75,000, and made out certain drafts in payment of the larger part of that sum. The defendant in error, Anna M. Forrest, administratrix of the estate of her late husband, Samuel Forrest, in proceedings in execution upon a judgment obtained by the said Forrest in his lifetime against Price, secured an injunction order against Price from receiving any drafts in payment of that sum, or any part thereof, from the Treasury. In violation of this order Price took the drafts and cashed them and subsequently, on being found in the State of New Jersey, was held in contempt by the chancery court.

There remained a balance of a little over $22,000 that had been held up at the Treasury for the reason that Price was surety upon a bond. This obligation was later released by the proper officials. Meanwhile the chancery court of New Jersey, on the 10th of October, 1892, had appointed the defendant Borcherling, receiver of "the property, things in action, belonging or due to or held in trust for said Price," at the time of the issuing executions on the judgment obtained by Forrest and revived by his administratrix, or at any time afterwards, "with authority to possess, receive, and sue for such property or things in action;" and the said Borcherling gave bond and entered upon his duties.

The said Price died intestate on the 7th June, 1894, and no administration has been taken out on his estate in the State of New Jersey. Mrs. Forrest and Borcherling, receiver, filed their bill 5th July, 1894, as a bill of revivor, and in the nature of a supplemental bill, against the heirs of Price and laid claim to this balance in the Treasury, asking that the heirs be perpetually enjoined from applying to the Treasury for the payment of the same, and that the court decree that the said sum was due and payable to the said Borcherling as receiver. Defendants filed a plea to this bill setting up (1) that the legislation of Congress was in the nature of a gratuity to Rodman M. Price, (2) that the assignment to Borcherling, receiver, had no effect upon this money in the Treasury because of the provisions of Section 3477 Revised Statutes, in regard to assignments. This plea was overruled by the Chancellor, and an appeal taken to the Court of Errors and Appeals, and the decision of the Chancellor was affirmed. The cause went back to the Chancellor. Defendants filed their answer setting up the same defence as before. Upon bill and answer the Chancellor decreed an injunction, and that the money was payable to Borcherling, receiver. Upon appeal, the Court of Errors and Appeals affirmed this decree. To this final judgment the heirs of Price take a writ of error to this court.

I.

The Chancellor of New Jersey had no power to allow this writ of error. He was not the presiding judge of the court that passed the decree. The constitution of New Jersey provides that "when an appeal from an order or decree shall be heard, the Chancellor shall inform the court in writing of the reasons for his order or decree, but shall not sit as a member or have a voice in the hearing or final sentence." Article VI, Section XI, subd. 5, General Statutes New Jersey, 1896, Vol. I, page *lix*. Section III, of the Act relative to the Court of Errors and Appeals, provides that "the Chan-

cellor when present shall be the President of the court; in case of his absence, the Chief Justice of the Supreme Court, and in case of his absence, the senior in office of the Justices of the Supreme Court who may be present." Gen. Stat. N. J., Vol. 1, page —.

For obvious reasons it is required that the court itself hearing the case below shall pass judgment upon the question whether the writ of error shall be allowed or not. The court in performing this duty speaks through its presiding officer. Hence, the need that the justice allowing the writ of error shall be one of those who sat at the hearing below.

Chancellor McGill was disqualified to sit at the hearing of the appeal from his own decree. As a matter of fact, he did not sit in the court, and was not a justice of the court passing this decree. We respectfully submit that this writ of error is not properly allowed, and the court is without jurisdiction.

II.

The decision of the court below should be affirmed.

1. The contention that the heirs of Price are entitled to this money, because Congress meant to make a *gift* of it to Rodman M. Price, purser in the navy, hardly deserves argument. *Forrest* vs. *Price*, 6th Dickinson, 25, and the same case on appeal, 35 Atlantic Reporter, 1075. The money was put to the credit of Price in his lifetime, in the usual manner of settling accounts of a salaried officer of the United States. The balance now in the Treasury was Price's in his lifetime; and if the heirs have any claim to it at all, it is by virtue of heirship, and not from the statute.

2. The objection that the order of the Chancery Court in New Jersey in appointing a receiver, did not have the effect to carry to such receiver the property in the claim at the Treasury, is equally groundless. Section 3477 Statutes with regard to the assignment of claims has been so frequently interpreted by this court that its construction may be considered as settled.

Its purpose has been declared several times as being for the protection of the Treasury, not of the claimant. *Bailey* vs. *U. S.*, 109 U. S., 432.

Assignments by operation of law are not within the mischief to be prevented. Assignments for the benefit of creditors (*Goodman* vs. *Niblack*, 102 U. S. 556), and assignments in insolvency are not prohibited. *Butler* vs. *Goreley*, 146 U. S., 303).

The same principle applies where chancery appoints a receiver. This is merely the application of the principle to another case illustrating an assignment by operation of law. This point has been passed upon by the Court of Claims, which treats an assignment to a receiver as comprehended within the language of this court in other cases. *Redfield* vs. *U. S.*, 27 Ct. Cl., 393.

Here the doctrine of *Walston* vs. *Nevin*, 128 U. S., 578, has full force. Plaintiffs in error cannot expect to maintain their writ when the underlying principle concerned has been determined by this court in numerous instances against the view which they assume.

Besides, as to so much of the decision below as sustains a perpetual injunction against the heirs, which these plaintiffs contest because of the statute in regard to assignments, it is enough to say that it does not involve a federal question, so as to give them the right to come here. The courts of New Jersey have full power to determine the extent to which they will enjoin their citizens from proceeding to lay claim to money in the Treasury. They act *in personam*. The State court does not seek to restrain the officials of the Treasury. It simply declares that, as between creditors of Price and heirs of Price, the latter shall not collect the money.

These proceedings are in execution upon a judgment that far exceeds the money now available. The payment of this money to the receiver, as representing Price and his estate, has been delayed since July, 1894. We have lost interest on this sum during this litigation in the State courts. No

supersedeas is given upon this writ of error. The writ is clearly taken for delay. Meanwhile, we are still losing more interest. The delay works an injustice to Mrs. Forrest. The plaintiffs have had ample opportunity below to assert their right in law to this fund. Enough of the record is disclosed to show how baseless their claim is. We therefore respectfully ask that this court affirm with costs the decree of the court below.

CORTLANDT PARKER,
RICHARD WAYNE PARKER,
FRANK W. HACKETT,
Counsel for Defendants in Error.

RODMAN M. PRICE, *et al.*, Plaintiffs in Error,
vs.
ANNE M. FORREST, Admx., *et al.*, Defendants in Error.

DISTRICT OF COLUMBIA, *ss:*

Personally appearing Frank W. Hackett, at Washington, in said District, on oath deposes and says that: On Saturday evening, April 17th, A. D. 1897, at 8.15 P. M., he deposited in the mail box at the station of the Baltimore and Potomac Railroad, in the city of Washington, D. C., a package addressed to J. Flavel McGee, Esquire, Jersey City, New Jersey, postage paid, with a special delivery stamp thereon, which contained a copy of the foregoing motion and brief, except that he has since discovered that in the caption of the notice the name of Rodman M. Price, one of the heirs, had not been included; said package was mailed in season to reach Jersey City on the morning of the 18th in due course of mail; and that said McGee was of counsel for the heirs, plaintiffs in error in this suit.

FRANK W. HACKETT.

Subscribed and sworn to at the said City of Washington, this 3d day of May, 1897.

Before me,

[L. S.] CHARLES W. STETSON,
Notary Public.

(From General Statutes of New Jersey.)

Vol. I, page lix.

ARTICLE VI.

(Constitution.)

JUDICIARY.

Section II.

* * *

1. The Court of Errors and Appeals shall consist of the chancellor, the justices of the supreme court, and six judges or a major part of them; which judges are to be appointed for six years.

* * *

5. When an appeal from an order or decree shall be heard, the chancellor shall inform the court in writing, of the reason for his order or decree; but he shall not sit as a member or have a voice in the hearing or final sentence.

* * *

Vol. I, page 1021.

COURTS.

I. COURT OF ERRORS AND APPEALS.

An Act relative to the Court of Errors and Appeals.

* * *

3. That the chancellor when present shall be the president of the court; in case of his absence, the chief justice of the supreme court; and in case of his absence, the senior in office of the justices of the supreme court who may be present.

* * *

TRANSCRIPT OF RECORD.

BILL.

In Chancery of New Jersey.

Between ANNA M. FORREST, *Admx. of* SAMUEL FORREST, *Deceased, Compt.*, and RODMAN M. PRICE.	Bill for Revivor and Relief and Order for Inj.

Filed July 5, 1894.

TO THE HONORABLE ALEX. T. MCGILL,
Chancellor of the State of New Jersey.

Humbling complaining showeth unto your Honor your oratrix, Anna M. Forrest, widow and administratrix of Samuel Forrest, deceased, of Charlestown, Virginia, and Charles Borcherling, of the City of Newark, County of Essex, and State of New Jersey, the said Anna M. Forrest, Administratrix, as aforesaid, filing this bill of complaint by permission of the court as a bill of revivor and original bill in the nature of a supplemental bill to the bill of complaint, filed by her as hereafter stated, against Rodman M. Price, of Bergen County, New Jersey, now deceased, jointly with his wife, Matilda C. S. Price and Francis Price, which bill was filed on or about the 30th May, 1874, and the said Borcherling appointed receiver in said cause, of the goods and chattels, rights, credits, property and effects, of the said R. M. Price, joining with her in the prayer hereof.

And thereupon your oratrix alleges that on or about the day and year aforesaid, your oratrix filed as aforesaid in this court, her bill, in which she alleged that about the 2d June, 1857, in the Supreme Court of New Jersey, said Forrest did recover against said R. M. Price a debt of $17,000, and also $78.04 costs; that about the 7th Nov. in said year said Forrest sued out a writ of *fieri facias* upon said judgment, but the same was returned unsatisfied; that said Forrest departed this life about the 7th day of Nov., 1860, intestate, the said judg-

ment still remaining unpaid and unsatisfied; that about the 22d Jan., 1874, administration of the goods, &c., of the said Forrest, deceased, was granted to your oratrix by the then Ordinary of this State; that your oratrix shortly afterwards sued out of said Supreme Court against said R. M. Price, a writ of *scire facias*, to revive said judgment; that about the 15th April, 1874, judgment was entered upon said writ that your oratrix should have her execution of the said debt and costs with interest; that on or about the 14th April, 1874, your oratrix sued out of said Supreme Court, a writ of *fieri facias* directed to the sheriff of the county of Bergen, commanding, &c., he should cause to be made said debt of $17,000 and costs, and if sufficient goods and chattels of said Price could not be found, then that the sheriff should cause said sum to be made of the real estate whereof defendant was seized on said 2d June, 1857, &c., &c.; that in said bill your oratrix set forth certain facts intended to show an interest to be possessed by the said Price in certain lands and other property in the county of Bergen, &c., &c.; also, allegations intended to show the possession by said Price of a claim of money upon a judgment against Erasmus B. Keyes and Edmund M. Scott; and that said Price had other property to the amount of many thousand dollars, exclusive of exemptions, which your oratrix had been unable to reach by execution, &c., &c. Said bill prayed discovery from said Price, of all property, &c., &c., and that the same might be appropriated to the payment of said judgment and costs, &c., and that some person might be appointed receiver; and that said Price might be enjoined, &c., from assigning real and personal property to which he was in any way entitled, &c., and such injunction was on the filing of said bill granted, and still remains.

Your oratrix shows that said R. M. Price, Matilda C. S. Price, his wife, and Francis Price filed their answer to said bill, in which said Rodman admitted the recovery of said judgment by the said Forrest, but alleged that the judgment was owned, as he believed, by Keyes, the person against whom the judgment in favor of said Price mentioned in said bill of complaint was obtained; that Keyes had paid Forrest the whole of the claim on which said judgment was founded; that Keyes had assets of this defendant years before Forrest recovered his judgment; that at the time of said Forrest bringing his suit said Price had already sued said Keyes for the money so recovered in the name of said

Price by the said judgment against Keyes in the State of New York; that by reason of hostile relations between said Keyes and said Price, the latter was unable to establish the payment of the claim of said Forrest, and was obliged to let said Forrest suit go by default, and he insisted that the said Keyes by his letters was estopped from alleging that there was nothing due on the said Forrest judgment, and the other defendants allege that they believe his statement to be true.

Said Price denied that any part of the properties mentioned in the bill were his, or that he had any interest therein; your oratrix shows that after filing of said answer, the cause slept until about the 9th August, 1892, when your oratrix filed therein a petition in which she stated that since filing the bill, no payment had been made, nor had complainant been able to find personalty or real estate of the said Price; that the whole of said judgment, with interest remained due, that execution *de bonis et terris* was issued and returned unsatisfied; that subsequently an alias writ of *fieri facias de bonis et terris* was issued, &c., but likewise returned unsatisfied, and that 4th August, 1892, your oratrix caused another writ of execution *de bonis et terris* to be issued, which execution was returned unsatisfied, no goods or lands being found whereon to make the levy. Your oratrix then stated on information that the sum of about $45,000 was about to be paid to said Price, being a sum found to be due him from the United States, by the delivery to Price or his attorneys of a draft of the treasurer of the U. S., payable to Price's order, that said draft was to be made and the transaction closed upon the 15th of the then month of August.

Your oratrix showed that said Price had always exhibited great unwillingness to satisfy any part of said judgment although said Price was the attorney in fact of said Forrest for the sale of certain land to him belonging in the State of California, and said Price made sale of said land and received a sum exceeding $20,000; that instead of paying over the money he retained the sum of about $17,000 and refused to pay over the same to said Forrest. Your oratrix stated that she believed said Price would, if he obtained the money coming from the U. S., at once take means to put the same beyond the reach of your oratrix unless restrained, and prayed that injunction might issue to the said R. M. Price forbidding him to make endorsement of any such draft, &c., to any other person whatever, except your oratrix

or her attorneys. Further she prayed a receiver might be appointed of said draft or other negotiable security, and that said Price might be ordered immediately on receipt of said draft, to endorse the same to said receiver, &c.

Your oratrix obtained from your Honor a rule, on the 8th August, 1892, returnable on the 12th Sept., following, that said Price should show cause, &c., and said rule directed that said Price should be and was thereby restrained and enjoined, etc.

Your oratrix shows that a certified copy was duly served upon the said Price upon the 10th August, 1892; that nevertheless after such service about the 5th day of Sept. in said year said Price received at Washington, four several drafts, dated 5th Sept. aforesaid, addressed to the Assistant Treasurer of the U. S. in New York, and payable to his order as late Purser U. S. N., such drafts being one $2,704.08, another for $13,500, a third for $20,000 and a fourth for $9,000; that about the 17th of Sept. aforesaid, said Price endorsed and received the money for said draft for $13,500, without permission of this court; that about 3d Oct., 1892, said Price endorsed and received the money for said drafts for $20,000 and $9,000 respectively, also without permission of this court, and about 5th Sept., said Price endorsed said draft for $2,704.08, and received the money therefor without permission of this court, and that he received all of said moneys and applied them to his own use.

Your oratrix further shows that on the same 3d Oct., 1892, on which he received the money for and endorsed said drafts for $20,000 and $9,000 respectively, said Price filed an answer in which he stated that the said judgment against him was paid, and further stated that there was a sum of money due to him from the U. S., voted to him or his heirs by Congress, and that about $45,000 was to be paid, but that said claim was not amenable to the payment of complainants' claim even if valid, nor could it be lawfully paid to any receiver.

Your oratrix shows that it appears by the record of said judgment that the same, instead of being by default, was a judgment upon confession, pleas in defence of said Price being by him first withdrawn, and that on the same day of his swearing to and filing said answer, said Price endorsed and received the money for the two drafts for $20,000 and

$9,000 respectively, the rest of said $45,000 having been previously paid to him.

Your orator shows that on the 10th October, 1892, it was ordered by this court that your orator, said Borcherling, should be and he was thereby appointed receiver of the property and things in action belonging or due to or held in trust for said Price at the time of issuing said executions heretofore mentioned, or at any time afterwards, and especially of said four drafts with authority to possess, receive, and it may be in his own name as such receiver sue for such property or things in action, and it was made thereby the duty of said receiver to hold said drafts subject to the further order of the chancellor herein, and said receiver was required to give bond for the faithful performance of his trust for $40,000, &c., and the said Price was ordered to convey and deliver to said receiver all such property and things in action, and the evidence thereof, and especially forthwith to endorse and deliver said drafts respectively, and each of them to said receiver and the said Price, and all agents or attorneys by him theretofore or thereafter to be appointed were thereby enjoined and restrained from intermeddling with said receiver in regard of said drafts, and ordered and directed if in possession or control thereof, to make delivery to him of the same, and to do all things necessary which should be within their power to put said receiver in possession and control thereof, provided nevertheless that if said drafts, excepting said draft for $13,500, should be delivered with the endorsement of said defendant to the clerk of this court, the proceeds thereof to be deposited to the credit of this cause on or before the 13th Oct. instant, then said order was to be void, and said Price was thereby enjoined and restrained from any endorsement or appropriation of any of said drafts otherwise than to said receiver or to said clerk for deposit as aforesaid. Your orators show that said drafts mentioned in the proviso contained in said order were not delivered as thereon stated, whereby said order remained in force.

Your orators show that said receiver complied with said order by filing such bond, and filed his official oath according to law, and entered upon the duties of his said office.

He thereupon caused to be served upon said Price a true copy of said order, and demanded of him in writing annexed thereto that he deliver to him the said receiver, said drafts of $9,000, $20,000 and $2,704.08, and further demand was

made that if said drafts or either of them were not in his physical possession but were held for him or subject to his control, whether alone or jointly with any other person, or deliverable upon the joint order of said Price and any other person, he was thereby required to give his consent and order in writing for their delivery to the said receiver, or to his order, and to direct the consent and order thereof to be given of any agent, attorney or trustee for him, and to do all things necessary within his power to put said receiver in possession and control thereof.

Service of said order, together with said demands, though sought to be made upon the 12th October, 1892, or thereabouts, was not made until on or about the 22d July, 1893, because said Price was not to be found within this State, but notice of said order without said demand and by delivery of a copy thereof to him, was given to said Price elsewhere than in this State, shortly after the date thereof. And your orators show that on or about the day of , 1892, an attachment was issued against said Price for contempt of this court in disobeying said order, and such proceedings were had thereon that upon full proof of such disobedience, said Price was convicted of such contempt by an order bearing date the 18th May, 1894, and was directed to pay over to the said receiver the sum of over $30,000, besides a fine of $50 and costs.

Said order further directed that on failure after five days service of a copy of said order upon him, to comply with the same, he should be imprisoned in the county gaol of said Bergen county until said order was performed.

Your orators further show that said $45,000, or thereabouts, the amount of said four drafts, was part of a certain debt of $76,000, awarded to the said Price by the officers of the Treasury Department under an act of Congress passed Feb. 23d, 1891, and agreed to be paid to him in conformity with said act.

The drafts for only the four amounts heretofore mentioned were issued and given to said Price on account of said debt, said officers at first believing there was a counter claim for a debt due by said Price to the Government of the U. S., but afterwards and about the day of , 1893, it was made known to your orators that the Treasury Dept. had reconsidered its determination and was about to pay unto said Price a sum of about $31,000 still remaining due upon said sum awarded, and that said Price and his attorneys

were actively seeking to obtain payment of the same, and thereupon by order of this court and upon proof of a demand made by the said receiver upon said Price, that he should sign and file his consent in writing with the Treasurer of the U. S. that said money remaining due as aforesaid should be paid to the said receiver, and upon further proof that said Price refused so to do, another order was made by this court, dated on the 18th May, 1894, by which said Price was directed to execute two certain instruments in writing, which before that time he had been required by this court to sign, seal and deliver, one of them consenting that the balance of said money due should be paid unto said Borcherling, receiver, which consent should be filed with said treasurer, and the other being an assignment in writing under his seal proposed to be made by him of all his property, real and personal, of all rights and credits to him belonging, and said last mentioned order directed that it should be served upon said Price by a delivery to him of a duly certified copy thereof.

Your orators show that at the time of service upon him of said duly certified copies of said orders respectively, said Price was sick, but was of sound mind, and capable physically of obeying the same, and especially of obeying the last mentioned order, and executing and sending to their proper destination the two instruments in writing last above described; your orators show that the said Price after service made upon him of said orders, and on or about the 8th June, 1894, departed this life, at his residence, in the County of Bergen.

Further your orators show that neither in the Prerogative Court, nor before the Surrogate of Bergen County, or the Orphan's Court, thereof, has any last will of the said Price been presented for probate, nor has application been made for the issue of letters of administration as in case of intestacy to the said R. M. Price, deceased. Your orators show that, although certified copies of said orders, on or about the 28th May, 1894, were duly served as aforesaid, yet the illness of said Price prevented any enforcement of said first mentioned order, and he departed this life without having paid said money in said order directing his incarceration in case of disobedience to the sum mentioned, and without affixing his signature to the instruments annexed to the second of said orders last mentioned, or to either of them.

Your orators are without remedy for the recovery of the

money belonging to the said receiver and due to the said administratrix, and the object of the said bill is entirely frustrated, and your orators are advised it is necessary that remedy should be sought in this court against whosoever should be admitted, either as executor or administrator, to represent the said R. M. Price, deceased, while as to the said balance of said sum of $76,000 remaining in the hands of the Treasurer of the U. S., and the disposition thereof according to law, your orators are without adequate remedy because of the legal impossibility of enforcing a decree directing the payment by the Treasury Department of the U. S. of said monies unto said receiver. Your orators show that nevertheless the officers of the Treasury are desirous of doing right and justice in the premises; that demand has been made by the said receiver, upon the Treasurer of the U. S. for the payment of said balance of money to him; that said treasurer does neither consent or refuse so to do, and awaits the determination by some lawful tribunal of the right of said receiver in the premises. Your orators believe that on the decree by this court that said receiver is entitled to said balance, and notice thereof duly given to the Secretary of the Treasury said decree will be respected, and said balance handed over.

Your orators further show that on the 9th June, 1894, being the day after the death of said R. M. Price, deceased, Francis Price, Rodman M. Price, Madeline Price, E. Trenchard Price, and Governeur Price, children of said R. M. Price, deceased, executed a power or powers of attorney to John C. Fay, of Washington, attorney in his lifetime for said R. M. Price, deceased, and who appeared in the course of the litigation in respect to said U. S. dratts in this court as such attorney; and by such powers of attorney authorized said Fay to apply to the Secretary of the Treasury to pay to them the balance standing to the credit of said R. M. Price under said Act of February 23d, 1891; that said parties are now pressing said claim with the Secretary of the Treasury, insisting that by the true construction of said Act said balance standing to the credit of said Price, deceased, belonged to them as his heirs at law, and that the said receiver has no right in the law thereto, being the same insistment made by said Price, deceased, in his answer to said petition.

Your orators show that the Treasury Department has settled with the said R. M. Price and credited him upon its books with the sum of about $76,000, as being due to him,

that it has, as aforesaid, paid to him through said four drafts, a large portion of said money, reducing the said credit thereby; that it has further paid unjustly and the same was received by the said Price and his attorneys in fraud of the law and the orders of this court heretofore rendered in said suit hereby sought to be revived, and of the bill to which this bill is intended to be supplemental, over $9,000, thereby reducing the balance apparent on said books as due to said Price in his lifetime to the sum of about $23,000; that under a proper construction of said law, and by force of said receivership, and the laws of New Jersey where said Price resided, said Price's right to all the balance aforesaid of said moneys passed to the said receiver, and remains still in him; that in the true construction of the words directing payment of said money to said Price and to his heirs, "to his heirs" are simply words importing that the monies he paid to the legal representative of said Price, in case, before such award, he had departed this life; that the said receivership having worked a legal assignment by said Price to the said receiver, of all his rights, credits and property, of whatever description, he is to be held in law as having received said monies and made assignment thereof unto the said receiver.

Your orators insist that there is no pretense of right in said children, although heirs of said Price, to make the demands aforesaid, or seek payment of the said balance to them. Your orators further show that it was argued before this court in the discussion of the motion for the last two orders by counsel for the said Price in the presence of two at least of the said children, and with their consent, as set up in said Price's answer to said petition that under proper construction of said Act of Feb. 23, 1891, said monies in case of the death of said Price passed to said children as his heirs at law; and the same insistment was made as a reason why said order for assignment in writing thereof and the consent in writing to such payment should not be granted, and said argument was duly considered by this court, which declared in its opinion filed, and under which said orders last mentioned were made, that said construction was erroneous, and that said monies in case of the death of said Price would, had there been no receivership, go to his executors or administrators, but in view of said receivership that the same belongs to the said receiver.

Your orators show that the action of said children in de-

manding said balance is in fraud of said orders made by your Honor, with which orders they were all acquainted, some at the time of delivering the same to said Price, deceased, and the others immediately thereafter; that some days before said service true copies of said orders were furnished to the counsel of said R. M. Price, and, as your orators believe, were communicated by him to said children; that knowledge thereof was also communicated through some one or more of said children or otherwise, to said Fay, and that the application made to said Secretary of the Treasury, as aforesaid, is in pursuance of agreement and conspiracy among said parties, including said attorney Fay, to defeat the operation of said orders.

Your orators repeat that the right to said monies and to all estate, real and personal, in possession or action, belonging to the said Price at the said date of said order appointing your orator, the said Borcherling receiver in this cause, and at the date prior thereto, of the issue of executions mentioned in said order, vested by law in said Borcherling receiver as aforesaid, and has been so adjudged after careful consideration of this court; that by orders and process issued in this cause said Price and said Fay, and all claiming under said Price, were enjoined from demanding said monies; that the receipt by said Fay of a part of said monies was in direct disobedience of the order of this court, and that action such as that now taken on the part of the said children of said Price and of his said attorney, to hold or obtain any part of said property or rights in the monies awarded to said Price, constitutes a conspiracy to thwart and defeat the orders and decrees of this court, and contempt of its authority and jurisdiction, and should be prevented by its decree.

Your orators insist that the disposition of said money and the adjudication of the right thereof belongs in law and in equity exclusively to this court, whose receiver claims the same under the law and his appointment, and that the action of said children of said Price in seeking to defeat the claim of said receiver, is a contempt of this court. Your orators further show that, no application having been made by any person in any court having lawful jurisdiction for letters of probate of any will of the said R. M. Price, deceased, or for administration of his estate, as an intestate, application has been duly made to the Prerogative Court of New Jersey, and letters of administration *ad prosequendum* have been granted unto Allan L. McDermott, wherefor said Allan L.

McDermott is hereby made defendant to this bill of complaint, to the end that decree may be made for the revival of said suit and for such further decree, &c., to the end that the said John C. Fay, Francis Price, Rodman M. Price, Madeleine Price, E. Trenchard Price and Governeur Price, joined as defendants in this suit with the said Allan L. McDermott as administrator *ad pros.* as aforesaid, may answer the premises, and that it may be decreed as follows:

1. That said bill filed in 1874, may be revived, and said administrator *ad pros.* be adjudged to be a proper party thereto.

2. That the said Francis Price, Madeline Price, Rodman M. Price, Governeur Price, E. Trenchard Price and John C. Fay, may each and every of them be perpetually enjoined and restrained from making any demand upon or application to the Government of the U. S., or the Secretary of the Treasury, or any officer of said treasury, or from receiving from the U. S. or its said secretary of the treasury, or any officer thereof, any part of the money now remaining in the Treasury of the U. S., and which was awarded to the said R. M. Price as aforesaid.

3. That the parties above named be ordered and decreed to pay to your orator the said Borcherling, receiver as aforesaid, to be by him disposed of under the orders of this court, any part of said money which they respectively have received or hereafter may receive

4. That said administrator *ad pros.*, or any executor or administrator of said R. M. Price, deceased, who shall hereafter be admitted and made a defendant may likewise answer this bill and be decreed to deliver and pay over to said receiver, all property of said Price, which shall come come to the hands of said executor or administrator, and to that end, he and the said children of said Price, do make discovery of all such property.

5. Other and further relief, etc.

6. Prayer for injunction and subpœna.

CORTLANDT & WAYNE PARKER,
Solicitors of said Complainants.

Affidavits of Cortlandt Parker and Frank W. Hackett.

July 2, 1894. Injunction issued restraining defendants from applying to the Treasury or receiving the money, or any part, credited to Rodman M. Price, deceased.

22 Sept., 1894.

JOINT AND SEVERAL PLEA OF MADELINE PRICE AND GOVERNEUR PRICE, DEFENDANTS.

Rodman M. Price died 7 June, 1894, intestate, leaving him surviving Matilda C. S. Price, his widow, and Francis Price, Madeleine Price, Rodman M. Price, Governeur Price and E. Trenchard Price, heirs at law. Said Price was not seized at the time of his death of any messuages, lands, &c., in New Jersey, or elsewhere, and no messuages, lands, &c., descended to these defendants or either of them from their said father; neither were any lands, &c., devised by said Price to these defendants, or either of them; neither these defendants, or either of them have any knowledge, information or belief as to the personal estate of deceased, except that said Price had at his death no personal estate or property whatever, as they believe, neither of these defendants has had or hath the possession, ownership or control of any personal estate whatever from their said father, or any knowledge of the existence anywhere of any such estate; neither have these defendants, or either of them, received any moneys from the Government of the U. S., either through their father, R. M. Price, or otherwise, under or by virtue of the act of 23 Feb., 1891, referred to in said bill.

[Here follows a copy of the act.]

But as to all moneys not actually received by said Price, in his lifetime, from the Government of the U. S. under said act, whether it be the $23,000 mentioned in said bill or any other sum actually remaining unpaid to the said Price at his death, these defendants, together with the other heirs of said Price, deceased, referred to in said act, are entitled to thereunder by special designation in the said act, as his heirs, and the said moneys so remaining unpaid are in no way chargeable with the debts and liabilities of the said Price, deceased, or to any of his creditors, and that all such moneys so unpaid to the said Price, in his lifetime, are payable by the Government of the U. S. directly and exclusively to these defendants and the other heirs of the said Price, deceased, and for the benefit of the said heirs respectively, without claim upon the same by the complainant. The balance unpaid to the said Price in his lifetime, and to which these defendants, together with the other heirs of said deceased, are entitled as aforesaid, which balance these defendants say and believe is about $23,000, is a part of the

sum referred to in said act as paid over to and receipted for by A. M. Van Nostrand, Acting Purser, Jan. 14, 1850.

That on or about 6 December, 1848, in the early settlement of California, said Price was assigned to duty upon the Pacific coast as Purser and Fiscal Agent of the U. S. for the Navy Department, he then being a Purser in the U. S. Navy, and acted as such to about December, 1849, or January, 1850, when he was detailed and ordered to transfer all public money and property remaining in his hands to his successor or such other disbursing officer as might be designated by the commanding naval officer of the Naval Station of California, and immediately after such transfer to report to Washington for settling his accounts. Afterwards, in December, 1849, A. M. Van Nostrand, referred to in said act, became the successor of said Price, in California, as Acting Purser in the Navy. About 31 December, 1849, Commodore Jones, U. S. N., commanding the squadron, directed Acting Purser Van Nostrand, aforesaid, to call on Purser Price and to receive from him all books, papers, office furniture and funds on hand belonging to the Purser's Department at San Francisco. In accordance therewith and with the instructions to said Purser Price, he paid over on the 31 December, 1849, to said Van Nostrand, Acting Purser, the sum of $45,000, being all the public moneys of the U. S. in the hands of the said Purser Price. On 14 January, 1850, said Price, out of his private moneys alone and not of the Government of the U. S., advanced to said Van Nostrand $75,000, and took his receipt thereof, as follows:

"SAN FRANCISCO, *January 14th*, 1850.

"Received from Rodman M. Price, Purser U. S. Navy, seventy-five thousand dollars for which I hold myself responsible to the United States Treasury Department, $75,000. (Duplicate.)

"A. M. VAN NOSTRAND,
"*Acting Purser.*"

Which advance was without the approval and signature of Commodore Jones, commanding officer of said acting purser, Van Nostrand, although the said Price regarded the advance as an accommodation to the Government of the U. S., at that time being in the early history of California.

Previous to the approval of the act aforesaid, and the adjustment of the accounts therein referred to, the Government of the U. S. had always declined upon request made

by the said Price, to pay or reimburse him for the said sum of $75,000, or any part thereof. Said Van Nostrand never returned or paid the said money or any part thereof to the said Price; neither did he account for the sum to the Government of the U. S. Previous to 12th March, 1854, Hon. Caleb Cushing, then Attorney General of the U. S., in obedience to the request of the Secretary of the Navy, investigated the claim of said Price against U. S. for the reimbursement to him of said $75,000, gave an opinion that the U. S. was not responsible for and could not be charged with the private funds paid by Price aforesaid to said Van Nostrand and without the written approval of said Commodore Jones, a copy of which opinion is annexed.

Previous to the opinion aforesaid said Price, had frequently claimed of the U. S. the payment of said $75,000, but the government had always declined to pay the same; after said opinion the government of the U. S. continued to decline to pay the same, up to the approval of said Act, always denying and disputing the liability of the government to pay the same. These defendants say that said claim was not a lawful claim against the government of the U. S. for which it was lawfully liable; but in view of the fact that the money had been paid or advanced by said Price, as aforesaid, in the belief that it would be an accommodation to the Government in the condition of things that existed in the early history of California, and that said Price had become old, and had been in the service of the U. S. as a Purser in the Navy for many years, and also Governor of the State of New Jersey, and that it was equitable and just, apart from the question of the lawfulness of the claim, that he or his heirs mentioned in the said act should be paid said sum of $75,000, said act was accordingly passed.

In accordance with said act the Secretary of the Treasury, about the month of August, 1892, adjusted the accounts of said Price, late Purser U. S. N. and Acting Navy Agent at San Francisco, California, crediting him with said sum of $75,000, leaving the sum of $76,204.08 found due him; said Price, upon such adjustment, according to the intent and meaning of the said act, which sum includes the whole of said $75,000 as a part thereof, of which these defendants admit the said Price, in his lifetime, actually received four drafts from the U. S. and the money therefor, amounting to $45,204.08, and that the balance thereof of $31,000, which is part of the said $75,000 after deducting any other sum

actually paid to the said Price, thereon in his lifetime by the U. S., these defendants, heirs, together with the other heirs aforesaid, are entitled to as aforesaid by virtue of said act of Congress and adjustment aforesaid.

All which matters and things defendants aver to be true, &c., &c.

BEDLE, McGEE & BEDLE,
Solicitors, &c.

[Here follows, *in extenso*, the opinion of Attorney General Cushing, dated 12th March, 1854, as printed in vol. 6, Reports of the Attorney General, pp. 357–368, ending viz]:

* * *

1. That the appointment of Van Nostrand as acting purser by Com. Jones was lawful and valid under the circumstances, and that the subsequent disapproval of the appointment of Mr. Secretary Preston could not retroact to make void previous lawful acts of the acting purser, in his receipt from Mr. Price of public money and other public property, in obedience to the order of Com. Jones.

2. That the Government is not responsible for and cannot be charged with the private funds paid by Mr. Price to Van Nostrand.

The affidavits of Madeline Price and Governeur Price are attached to the plea.

A plea identical with this plea was filed by Francis Price, Rodman M. Price and E. Trenchard Price.

1895, July 29. Defendants pleas overruled with costs, and defts. ordered to answer bill within thirty days.

August 5. Defts. appeal from order overruling pleas.

1896, March 2. Decree of Court of Errors and Appeals affirming the order of the Court of Chancery, and remitting record to the Court of Chancery.

OPINION.

1. A statute of the United States which authorizes and directs the Secretary of the Treasury of the United States to adjust the accounts of a former Purser in the Navy, upon principles of equity and justice, and credit him with a sum of money paid over to and receipted for by his successor in office, although such payment was without governmental

authority, and directing the payment of the sum that may be found due him upon such adjustment, to him "or his heirs," is not a statute which bestows a mere gratuity or bounty, but it is the restitution of property which once belonged to him as assets for the liquidation of his pecuniary obligations, and upon its restoration it can not be held to have assumed a new character. The words "or his heirs" are simply words of succession and descriptive of his estate in the money found to be due him, and used in the statute in the sense of personal representatives, and intended to secure the moneys to his estate, in the event of his death before they were paid.

2. The assignment of a claim against the United States, ordered by the court of chancery to be made by a debtor, or his representatives if he be deceased, to a receiver in aid of proceedings in said court by a creditor to obtain satisfaction of a judgment at law recovered against the debtor, is not prohibited by and is not a nullity under the provisions of Section 3477 of the Revised Statutes of the United States.

3. Such an assignment to the receiver or an assignment to him by operation of law in such proceedings, by virtue of his appointment as receiver, vesting in him, under the powers with which he is clothed, the right to take, receive, sue for and distribute according to law, and the orders of the court from which he derives his appointment, is an exception to the provisions of Section 3477 of the Revised Statutes of the United States requiring assignments of such claims, or power of attorney to receive the same, to be acknowledged by the persons executing them, and to be certified by the officer taking such acknowledgments.

4. The objects of Section 3477 of the Revised Statutes of the United States are that the Government may not be harassed by multiplying the number of persons with whom it has to deal, and that it might always know with whom it was dealing until a contract is completed and an adjustment and settlement made; and none of these evils can happen upon an assignment for the benefit of the creditors of a claimant, either expressly ordered to be made by a court having jurisdiction or resulting by operation of law.

5. The court of chancery has jurisdiction to determine the right of the distribution of such claim in payment and satisfaction of a judgment debt due from the claimant to his cred-

itors, whenever the proper parties are before the court and the point decided be within the issues made by the pleadings.

[Opinion, by LIPPINCOTT, J., follows.]

June 19. Order of chancellor making the decree of the court of errors and appeals the decree of his court.

ANSWER.

The joint and several answer of Madeline Price, Governeur Price, Francis Price, Rodman M. Price and E. Trenchard Price, to the bill in the nature of a bill of revivor of Anna M. Forrest, administratrix of Samuel Forrest, deceased, and Charles Borcherling, receiver, appointed by this court in a case in this court wherein the said Anna M. Forrest was complainant, and Rodman M. Price, now deceased, and his wife, Matilda Price, were defendants.

These defendants respectively for answer, &c., say:

I.

The said Madeline Price, Governeur Price, Francis Price, Rodman M. Price and E. Trenchard Price are the only children and next of kin and heirs of the said Rodman M. Price, deceased.

II.

Admit the filing of the original bill, and answer thereto; the petition in that cause; the issuing of the order to show cause, founded on the petition; the appointment of Borcherling as receiver; his giving bond, and the restraining order, as alleged.

Have no knowledge whether said Price received the moneys alleged to have been drawn by him from the Assistant Treasurer of the U. S., but are informed and believe that moneys to amount mentioned were drawn; whether received by Price or not they do not know; they allege that none of these moneys were received by these defendants or any of them, either during the lifetime of said Price, or since his death.

Admit that said Price did not comply with the demands of said order, by delivering over any drafts or money to said receiver, that proceedings were taken against him in the court of chancery, for contempt of court in not obeying said order, and that judgment of contempt was entered

therein, that the said Price was very ill at the time said order was made, and that he afterwards died, at date named in the bill, without such order having been executed.

Admit that no will of said Price has been presented to any probate court, and say that no will was left by him so far as they know, or have any reason to believe; that no letters of administration have been issued; that he left no estate, so far as they know or have any reason to believe; that nothing has ever come to them; that no property, real or personal, has ever come to them, or any of them, from his estate, and there is no property of his estate, to come to them of which they are aware.

Admit that complainants are without remedy for the recovery of the money alleged to be due from said Price, if there be any such money due, and deny that they can, by any proceeding in this court, sequester the moneys in the Treasury of the U. S. for reasons thereinafter stated.

As to what is the disposition of the Treasury Department of the U. S., or whether demand has been made on the officers of that department, as alleged, defendants have no knowledge.

Admit that after the death of said Price they executed a power of attorney to said Fay, of Washington, counsellor at law, for the purpose of collecting for them the moneys in the Treasury; assert that they were by law entitled so to do, and charge that they are now entitled to receive from Treasury moneys remaining which are parcel of the moneys awarded by Act of Congress; allege that at death of said Price deft's became entitled under the Act to all the moneys then remaining in the Treasury as original takers; further are advised and charge that there is no jurisdiction in the court to sequester the moneys remaining in the Treasury and awarded under the Act; that the only persons to whom the same can legally be paid are these deft's, or such persons as may hold an assignment thereof, freely made by these deft's in accordance with, and having all the formalities required by the laws of the U. S.

Deny that the appointment of said receiver and order appointing him worked a legal assignment by the said Price to complainant Borcherling, or conveyed to him any of the rights of any of the takers under said act.

Admit that it was contended on argument of original cause that under a proper construction of said Act, said moneys in case of death of said Price, passed to his children

as original takers under the description of heirs at law; that such contention was correct and should have been adopted by the court.

With reference to allegation that the action of the court and orders in original cause were made known to deft's, they deny the allegation and say that while they had knowledge of proceedings in a general way, they did not have specific knowledge, nor what orders were being made, nor anything but general knowledge that a suit was being prosecuted against their father to recover these moneys; their action after his death was by reason of belief in their rights as original takers under the Act,—for recovering that which by law was their right.

Deny disobedience; say they were not advised of original suit, not served with process in the case and not, except in a general way, advised of its existence; deny that the order to convey to Borcherling was binding on them or concluded their rights; deny that their action was any contempt of court, or that they were under any obligation to apply to this court in reference to these moneys.

Further answering defendants say the facts are as follows:

That said Rodman M. Price, late of Bergen County, in the State of New Jersey, departed this life on 7 June, 1894, intestate leaving him surviving [thence follows a repetition of the language of the plea, word for word, with the letter of Att'y General Cushing appended as set out on pp. 20–23 of this record]. * *

Final Decree of Chancellor.

Between

Anna M. Forrest, widow and administratrix of Samuel Forrest, deceased, Charles Borcherling, receiver, *Complainants*,

and

Rodman M. Price, Francis Price, Madeline Price, Governeur Price, E. Trenchard Price and John C. Fay, *Defendants*.

On remittitur from the court of errors and appeals in the last resort in all causes.

This cause coming on to be heard on bill and answer at the May Term of the year, eighteen hundred and ninety-six, of the court of chancery, in the presence of Mr. Cort-

landt Parker, of counsel with the complainants, and Mr. Flavel McGee, of counsel with the defendants, and the pleadings having been read, and the Court being of opinion that the complainants are entitled to the relief prayed in so far as it relates to the collection by the defendants of the moneys mentioned in the bill of complaint and still in the Treasury of the United States. It is now ordered and decreed, that the said defendants, and each of them, be, and they hereby are perpetually enjoined and restrained from making any demand upon or application to the Government of the United States, or the Secretary of the Treasury of the United States, or any officer of the said Treasury, or from receiving from the United States, or its said Secretary of the Treasury or any officer thereof, any part of the money remaining in the Treasury of the United States at the time of filing said bill of complaint, and which was awarded to Rodman M. Price, deceased, as in the said bill stated, or now there remaining; and that the said defendants likewise pay to the complainants or their solicitors their costs, to be taxed in this cause.

Dated the twenty-fifth day of June, one thousand eight hundred and ninety-six.

ALEX. T. McGILL.

On motion of
CORTLANDT & WAYNE PARKER,
Solicitors of said complainants.

Filed August 30, 1896.

1896, Nov. 2. Appeal of defendants to Court of Errors and Appeals.

FINAL DECREE OF COURT OF ERRORS AND APPEALS.

Court of Errors and Appeals in the last resort in all causes.

Between RODMAN M. PRICE *et. als.*, Defendants,
and
ANNA M. FORREST, Admin'x of Samuel Forrest, Dec'd, CHARLES BORCHERLING, *et. al.*, Respondents.

} On appeal from Chancery on final decree.

This cause having come on to be heard at the November term of this court last past, and the same having been argued by Mr. Flavel McGee of counsel for the appellants and

Mr. Cortlandt Parker of counsel for the respondents, and the matters involved having been duly considered by the court, it is now on this eleventh day of January, one thousand eight hundred and ninety-seven, on motion of Cortlandt and Wayne Parker, solicitors and of counsel for the respondents, ordered, adjudged and decreed that the decree of the chancellor from which appeal to this court was taken be and the same is hereby in all things affirmed, with costs to be taxed, and that the record be remitted to the court of chancery to proceed therein and therewith according to law.

Endorsed, Filed Jan. 11, 1897.

HENRY C. KELSEY, *Clerk.*

OPINION.

The opinion of the court was delivered by LIPPINCOTT, J.:

This appeal from the final decree of the court of chancery in this cause brings up for decision the rights of the parties under the Act of Congress set out in the pleadings and under Section 3477 of the Revised Statutes of the United States.

These questions having been passed upon in the opinion of this court, on the appeal from the decree of the chancellor overruling the pleas of the defendants in this cause, 35 Atlantic Reporter, 1075, the decree now appealed from, for the reasons there given, must be affirmed with costs.

"Filed Apr. 22, 1897. GEORGE WURTS, *Clerk.*"

Certificate of Sec. of State and ex-officio clerk, etc., that the foregoing is a full, true and complete copy of the record 22 April, 1897, under seal.

ASSIGNMENT OF ERRORS.

Afterwards, that is to say, on the sixth day of May, eighteen hundred and ninety-seven, in the Supreme Court of the United States comes the said Rodman M. Price, Madeline Price, Governeur Price, Francis Price and E. Trenchard Price, Plaintiffs in Error, by Flavel McGee, their solicitor, and say that in the record and proceedings aforesaid, and in the decree aforesaid given in the Court of Errors and Appeals in the last resort in all causes in New Jersey, there is manifest error in this, to wit:

That said Court of Errors and Appeals in the last resort in all causes in New Jersey, decreed that the decree of the

Chancellor from which appeal to said court was taken be and the same was thereby in all things affirmed with costs to be taxed, whereas by law said court should have decreed that said decree of the Chancellor be reversed with costs to be taxed.

There is also manifest error in this, to wit, that said Court of Errors and Appeals decreed that said decree of the Chancellor which decreed that said defendant, these plaintiffs in error, and each of them be and they thereby were perpetually enjoined and restrained from making any demand upon, or application, to the Government of the United States, or the Secretary of the Treasury of the United States, or any officer of the said Treasury, or from receiving from the United States, or its said Secretary of the Treasury, or any officer thereof, any part of the money remaining in the Treasury of the United States at the time of filing the said bill of complaint, and which was awarded to said Rodman M. Price as in said bill stated or there remaining.

Whereas by law said court should have decreed that said decree be reversed, said final injunction dissolved, and said bill of complaint dismissed.

There is also manifest error in this, to wit, that the said Court of Errors and Appeals decreed that said decree of the chancellor, which decreed that these plaintiffs in error pay to the complainants or their solicitors their costs to be taxed.

Whereas by law said court should have decreed that said decree be reversed, and that said complainants pay to these plaintiffs in error their costs of said suit.

There is also manifest error in this, to wit, that said Court of Errors and Appeals by said decree decided that under the Act of Congress entitled "An Act for the relief of Rodman M. Price," approved February 23, 1891, and which is set out in full in the answer filed by these plaintiffs in error in the Court of Chancery of New Jersey, *pro ut* the case, the money therein mentioned was intended to benefit the estate of Rodman M. Price, and to be within the reach of his creditors, and that the heirs of said Rodman M. Price, deceased, were not thereby personally intended to be the beneficiaries of the United States by way of gift or gratuity to them as such.

Whereas by law said court should have decided that under said Act the money therein mentioned was intended to be for the benefit of said Rodman M. Price, now deceased, if, and in so far as, the same was paid to him during his

life, and for the benefit of his heirs as original takers, in so far as the same was not paid to him during his life.

There is also manifest error in this, to wit, that said Court of Errors and Appeals by said decree decided that the heirs of said Rodman M. Price deceased were subject to the jurisdiction of said court in the premises, and that that court can treat them as if they were in the possession of said money in order to compel them to assign it to the receiver appointed in said suit, or to give effect to such assignment to him by operation of law;

Whereas by law said court should have decided that these plaintiffs in error, as such heirs of Rodman M. Price, were original beneficiaries under said Act, and were not subject to the jurisdiction of the court for the enforcement of the judgment against the said Rodman M. Price deceased and could not be compelled by said court to assign it to a receiver appointed in said suit, or to give an effect to such an assignment.

There is also manifest error in this, to wit, that said Court of Errors and Appeals by said decree decided that an assignment of the claim of these plaintiffs in error to said moneys, made by the order or decree of said court, against the will of these plaintiffs in error, and without the formalities required by Section 3477 of the Revised Statutes of the United States, is valid:

Whereas by law said court ought to have decided that an assignment so made, without said formalities, is void.

There is also manifest error in this, to wit, that said court of errors and appeals by said decree decided that the receiver appointed in said suit in equity took title to said moneys from said Rodman M. Price, deceased, or the defendants, these plaintiffs in error, by operation of law, and that the title thereto of said Rodman M. Price, deceased, or the defendants, these plaintiffs in error, was vested in him by operation of law;

Whereas by law said court ought to have decided that no title could be legally vested in him by decree of said court, but that any assignment or transfer so made would, under Section 3477 of the Revised Statutes of the United States, be void.

There is also manifest error in this, to wit, that said Court of Errors and Appeals by said decree decided that a transfer of said moneys, made to said receiver against the

will of the said plaintiffs in error, and without the formalities required by Section 3477 of the Revised Statutes of the United States, was a transfer made by operation of law and valid;

Whereas by law said Court ought to have decided that a transfer so made would not be by operation of law, and was void.

There is also manifest error in this, to wit, that these plaintiffs in error in and by their said answer in said cause claimed, under said Act therein recited, entitled, "An Act for the relief of Rodman M. Price," that they were entitled to the balance of the said moneys in the Treasury of the United States therein mentioned, as original takers under said Act, and said Court of Errors and Appeals by said decree decided that they were not such original takers under said Act;

Whereas by law said Court ought to have decided that they were.

There is also manifest error in this, to wit, that these plaintiffs in error in said cause specially set up and claimed under said Act entitled "An Act for the relief of Rodman M. Price," in their said answer recited, a right, under said statute to receive the moneys therein mentioned, from the United States, and the said decision of the said Court of Errors and Appeals was against said right so specially set up and claimed by these plaintiffs in error.

And there is also manifest error in this, to wit, that in said suit, these plaintiffs in error, under Section 3477 of the Revised Statutes of the United States, specially set up and claimed that no transfer or assignment of their said claim for said moneys upon the United States, or any part thereof, could be validly ordered by said court against their will, nor without the formalities mentioned in said Section 3477 of the Revised Statutes of the United States, and the said Court of Errors and Appeals by its said decree decided against said right so specially set up and claimed by these plaintiffs in error.

Wherefore the said plaintiffs in error pray that the decree aforesaid, by reason of the errors aforesaid, and for other errors appearing in the record and proceedings aforesaid, may be reversed, annulled, and for nothing holden, and

that the said the plaintiffs in error may be restored to all things they have lost on occasion of said decree.

FLAVEL MCGEE,
Attorney for and of Counsel with the Plaintiffs in Error.

Approved:

ALEX. T. MCGILL,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the last resort in all causes in New Jersey.

(Endorsed.)

BOND.

SUPREME COURT OF THE UNITED STATES.

RODMAN M. PRICE, MADELINE PRICE, GOVERNEUR PRICE, FRANCIS PRICE and E. TRENCHARD PRICE, Plaintiffs in Error,
vs.
ANNA M. FORREST and CHARLES BORCHERLING, Defendants in Error.

Know all men by these presents, that we, Rodman M. Price, of Brooklyn, New York, and Anderson Price, of Rutherford, Bergen County, New Jersey, are held and firmly bound unto Anna M. Forrest and Charles Borcherling in the sum of five hundred dollars, to be paid to the said Anna M. Forreet and Charles Borcherling, their executors or administrators, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals, and dated this seventh day of April, A. D. one thousand eight hundred and ninety-seven.

Whereas, lately at a term of the Court of Errors and Appeals in the last resort in all causes in and for the State of New Jersey, in a suit depending in said court between Anna M. Forreet and Charles Borcherling, complainants and respondents, and Rodman M. Price, Madeline Price, Governeur Price, Francis Price and E. Trenchard Price, defendants and appellants, judgment was rendered against the said Rodman M. Price, Madeline Price, Governeur Price, Francis Price and E. Trenchard Price, appellants, and the said Rodman M. Price, Madeline Price, Governeur Price, Francis

Price and E. Trenchard Price, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Anna M. Forrest and Charles Borcherling citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington, the sixth day of May, next.

Now the condition of the above obligation is such, that if the said Rodman M. Price, Madeline Price, Governeur Price, Francis Price, and E. Trenchard Price, shall prosecute their said writ or error to effect and answer all costs if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

RODMAN M. PRICE. [L. S].
ANDERSON PRICE. [L. S].

Sealed and delivered in the presence of—
KENNETH FOWLER.

STATE OF NEW JERSEY, } *ss:*
County of Bergen, }

Anderson Price, of full age, being duly sworn on his oath saith, that he owns real estate in Rutherford, Bergen County, New Jersey, worth upwards of One Thousand Dollars, over and above all incumbrances, and over and above all his just debts and liabilities.

ANDERSON PRICE.

Sworn and subscribed this ninth day of April, 1897, before me,

FRANCIS H. McGEE,
A Notary Public of New Jersey.

(Endorsed:) Approved by Alex. T. McGill, Chancellor, Presiding Judge of the Court of Errors and Appeals in the last resort in all causes in New Jersey.

Filed:

UNITED STATES OF AMERICA, *ss:*

To Anna M. Forrest and Charles Borcherling, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the sixth day of May next, pursuant to a writ of error filed in the clerk's office of the Court of Errors and Appeals in the last resort in all causes in the State of

New Jersey, wherein Rodman M. Price, Madeline Price, Governeur Price, Francis Price and E. Trenchard Price, are plaintiffs in error, and you, Anna M. Forrest and Charles Borcherling are defendants in error, to show cause, if any there be, why the decree in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alexander T. McGill, Chancellor, presiding judge of the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey, this seventh day of April, in the year of our Lord, one thousand eight hundred and ninety-seven.

ALEX. T. MCGILL,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey.

[Endorsed:] Filed.

Without waiver of any legal exception to the form thereof service on the defendants in error of this citation and of a copy of the writ of error in the case acknowledged this 13th day of April, 1897.

CORTLANDT AND WAYNE PARKER,
Attorneys of Defendants in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of "The Court of Errors and Appeals in the last resort in all causes" in the State of New Jersey, greeting: [L. S.]

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Court of Errors and Appeals in the last resort in all causes before you, being the highest court of the said State in which a decision could be had in the said suit between Rodman M. Price, Madeline Price, Governeur Price, Francis Price and E. Trenchard Price, appellants and plaintiffs in error, and Anna M. Forrest and Charles Borcherling the defendants in error, wherein is drawn in question the validity of a statute of, and of an authority exercised under, the United States, and the decision was against their validity; and wherein was drawn in question a title, right, privilege and immunity claimed by the plaintiffs in error under a statute of the United States, and the decision was against the title,

right, privilege and immunity specially set up and claimed by the plaintiffs in error under such statute, a manifest error hath happened, to the great damage of the said Rodman M. Price, Madeline Price, Governeur Price, Francis Price and E. Trenchard Price, the said appellants and plaintiffs in error, as by their complaint appears we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at Washington, on the sixth of May next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the seventh day of April, in the year of our Lord, one thousand eight hundred and ninety-seven.

S. D. OLIPHANT,
Clerk of the Circuit Court of the United States for the District in New Jersey, Third Circuit.

Allowed by ALEX. T. McGILL,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the last resort in all causes in New Jersey.

The answer of the Judges of the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey within named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Supreme Court of the United States in a certain schedule to this writ annexed, as within commanded.

ALEX. T. McGILL,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the last resort in all causes in New Jersey.

[Endorsed :]
Certificate of ——— ——— Clerk of———

(Filed May 10, 1897.)

STATE OF NEW JERSEY, COURT OF ERRORS AND APPEALS, NOV. TERM, 1896.

IN THE CASE OF RODMAN M. PRICE *and* ANNA M. FORREST. } On Appeal.

No. 64 of Nov. Term, 1896. Date 11 Jan'y, 1897.

DAVID A. DEPUE, presiding.

Opinion by Judge Lippincott.

Check list.

AFFIRM. The Chief Justice, Garrison, Gummere, Lippincott, Ludlow, Magie, Van Syckel, Barkalow, Bogert, Dayton, Hendrickson, Krueger, Nixon, total 13.

REVE'L.

Filed Jan'y 11, 1897. Henry C. Kelsey, clerk. Certificate of George Wurts, Secretary of State, 5th May, 1897.

No. 797. 867.

Reply Brf. of Parker, Parker & Hackett for D. C. (ma

Supreme Court of the United States.

OCTOBER TERM, 1896.

Filed May 10, 1897.

ANNA M. FORREST, Administratrix of SAMUEL FORREST, Deceased, and CHARLES BORCHERLING, Receiver, Defendants in Error, *vs.* RODMAN M. PRICE, MADELINE PRICE, and ALS., Plaintiffs in Error.	797 Brief by way of reply to brief of Plaintiffs in Error on motion to dismiss or affirm.

Counsel for Plaintiffs in Error allege two grounds of jurisdiction.

1. That the "Act for the relief of Rodman M. Price," the deceased father of the Plaintiffs in Error, provided a gratuity, and therefore that the money in the Treasury, about which the suit is brought, belongs to Plaintiffs in Error as his heirs.

2. That the money cannot lawfully go out of the Treasury to the receiver because under Section 3477 of the U. S. Revised Statutes it can only be assigned in the way therein specified.

Briefly consider these insistments.

I.

1. Defendants' brief shews (page 6–7) that Rodman M. Price, deceased, then a purser in the U. S. Navy advanced $75,000 to the United States and made claim for its repayment, which was refused, it would appear, on technical grounds.

The Act of Congress was passed to remedy this wrong,

and directed the Secretary of the Treasury to audit the claim on principles of equity and justice, and to pay Price or his heirs what he found due.

Instead of this being a gift or a gratuity, it was an acknowledgment by Congress of a debt, a direction to adjust its amount and discharge it. The Act construes itself. It said the United States owes Mr. Price—not so as to entitle him to bounty, but to justice.

Much less can the Act mean to make a gift to Price's heirs. Why to them? They might be collateral heirs. Could the Congress wish to benefit *them*, or could it wish to give money to Price's children? What have they done or he, to deserve it?

Plainly the Act contemplated that Price might die before, through adjustment, the amount of the debt was settled, and then, it directed, using technical words of succession, that his *representatives* should have the benefit of the Act, for adjustment and for payment.

Many acts of Congress use the word "heirs" as equivalent to "legal representatives." *Emerson* vs. *Hall*, 13 Peters, 409, construed an act declared by its title to be for the "relief of the heirs of Emerson, deceased," and which in its body directed payment to his legal representatives of a gratuity, to be intended for the benefit of the decedent's *heirs*, thereby showing a sometime use by Congress of the two phrases as synonymous—and giving effect to the title of the act rather than to the words of its body.

There could be no heirs till R. M. Price's death. *Could* the act have meant to pay them, instead of his legal representatives?

But, when Price died, the whole sum had been credited to him. (Plaintiff's brief, pp. 6–7.) It was then a debt due by the U. S. to him. After this, October 10, 1892, in her creditor's suit filed by defendants in error against Price, and after he, in disobedience to the injunction of chancery, had cashed the drafts for the greater part of it, and used the money, Charles Borcherling was appointed receiver of all

" property and things in action belonging to or due to or held in trust for him."

Thus, by act of law in New Jersey, this debt was assigned by Price in his lifetime to Borcherling as receiver, in trust for all creditors, after paying the Forrest debt.

This, we contend, left nothing for any one else to get—even giving the false meaning to the words " or his heirs," for which Plaintiff in Error contends there was nothing for them " to take"—Price, had, in law, taken it all.

The effect of this receivership, by the New Jersey Act and the order of the Court of Chancery, was to make this money, once due to Price, due thenceforth to the receiver. See Rev. St. N. Jersey, p. 121, and Chancery order mentioned in record and briefs.

And New Jersey decisions recognize the right of receivers in other States to sue for property here. *Hurd* v. *Elizabeth*, 12 Vroom, 1.

II.

As to the effect of Section 3477, it is clear

1. That it cannot apply, because the act applies only to voluntary assignments. Assignments by operation of law are not affected by it.

112 U. S., 733—*St. Paul & D. R. R. Co.* v. *United States*, cited by Plaintiffs in Error, held that a voluntary transfer begun by way of mortgage though *completed* by judicial sale, was void. But here the assignment is made by the law, not by the party, and the point in the case was that the mortgage was an assignment; that it was voluntary, and that the judicial decree only completed it. Said the Court, " if the statute does not apply to such cases, it would be difficult to draw a line of exclusion which leaves any place for the operation of the prohibition."

It is equally plain that the other cases on plaintiff's brief do not apply. The statute refers to voluntary assignments only.

Ought the court to be detained by a writ of error in this case?

III.

But, has the appeal been lawfully taken?

The Court of Errors and Appeals of New Jersey is composed of the chancellor, the justices of the Supreme Court and six associate judges. Of these the chancellor is president.

This, by the constitution.

But, by the constitution and the law in pursuance of it (see Brief for defendants in error, page 4), the chancellor is *not a member* of the court on appeal from his own decision. This fact plaintiffs' brief does not notice. In his absence, the chief justice, and in his, the senior justice is president of the court. It is not the chancellor then who was entitled to sign the citation in this case. The statute of the U. S. must rule.

CORTLANDT PARKER,
WAYNE PARKER,
FRANK W. HACKETT.

No. 105.

BRIEF FOR DEFENDANTS IN ERROR.

Brief of Parker, Parker & Hackett for D. E.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 105.

Filed Dec. 1, 1898.

ODMAN M. PRICE, MADELINE PRICE, GOVERNEUR PRICE, FRANCIS PRICE AND E. TRENCHARD PRICE, PLAINTIFFS IN ERROR,

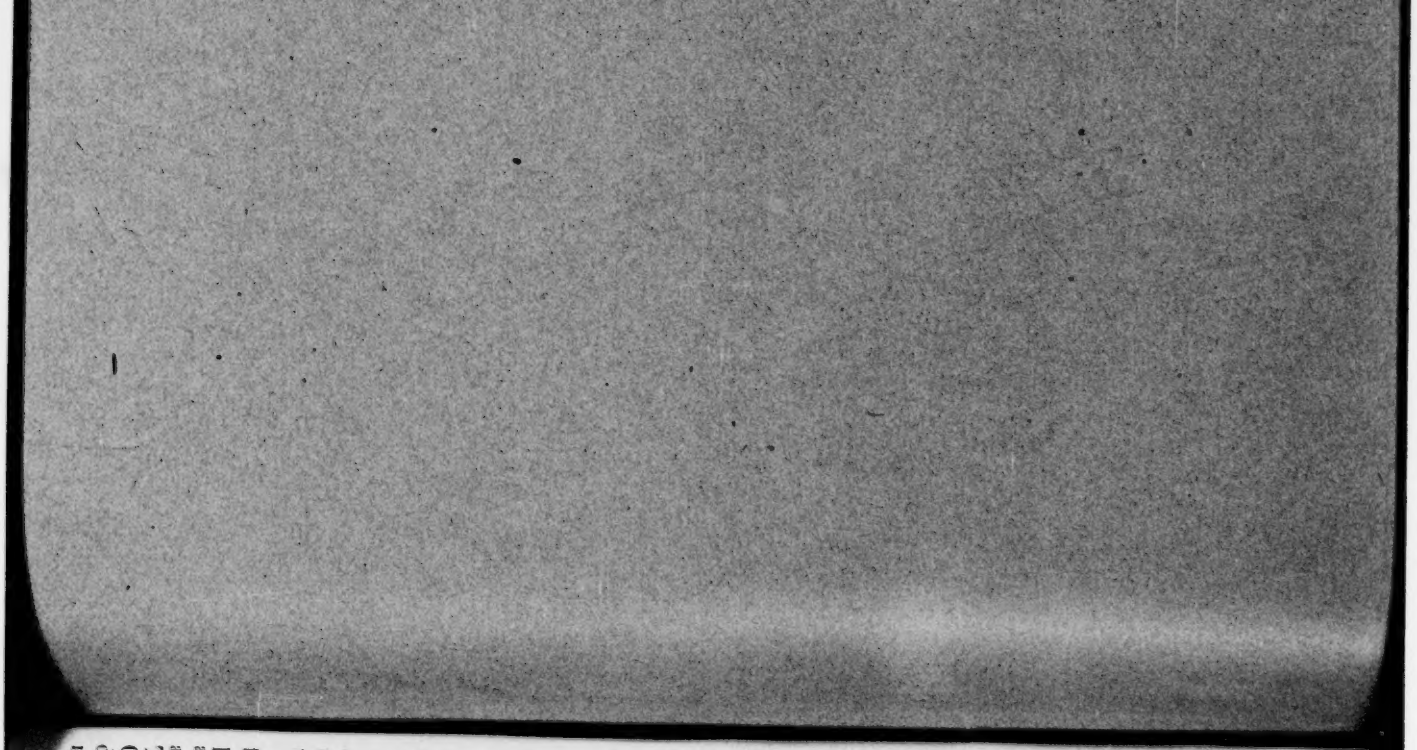
vs.

NNA M. FORREST AND CHARLES BORCHERLING, DEFENDANTS IN ERROR.

ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

CORTLANDT PARKER,
R. WAYNE PARKER,
FRANK W. HACKETT,
Of Counsel for Defendants in Error.

(16,576.)



Supreme Court of the United States

ANNA M. FORREST, ADMINISTRATRIX OF SAMUEL FORREST, DECEASED, AND CHARLES BORCHERLING, RECEIVER, ETC.,
Defendants in Error.

adsm.

RODMAN M. PRICE AND OTHERS, CHILDREN OF RODMAN M. PRICE, DECEASED,
Plaintiffs in Error.

On Writ of Error removing Decree of the Court of Errors and Appeals of the State of New Jersey.

The issue in this cause would seem to be a single one.

Mrs. Forrest filed her bill of revivor and supplement as administratrix of her husband, alleging that in the original cause Charles Borcherling was appointed Receiver of the property and things in action belonging or due to or held in trust for Rodman M. Price, deceased, at the time of issuing executions upon original and revived judgments, recited in the bill, or at any time afterwards, and especially was he appointed Receiver of four drafts therein mentioned, with power to possess, receive and sue for such property or things in action.

For the bill, see pages 11 to 23 of the printed record.

The bill further states (see the same pages) that there still remains in the Treasury of the United States about twenty-three thousand dollars to the credit of Rodman M. Price, being the remainder of a debt of $76,000 awarded to him, about $54,000 of which the said deceased, in contempt of the Court of Chancery of New Jersey, and of injunctions issued by it, had received from the treasury and applied to his own use; that the defendants, who are his children, are seeking to obtain this money, and the bill prays: 1st, revivor of the formal decree; 2d, an injunction against the defendants preventing them from demanding or receiving any of this remaining money; and 3d, that the defendants be ordered to pay over to Charles Borcherling, Receiver of the said Rodman M. Price, deceased, any part of said money which they respectively have received or may receive.

To this bill the defendants, children of Rodman M. Price, deceased, filed pleas. alike in form, by which an act of Congress is set out, approved February 23, 1891, and by which they assert that under this act they, as his heirs at law, are entitled to said money, and afterwards an answer setting up the same defense (see Record 25 to 37 and 42 to 68.) This writ of error comes to this Court because of the Decree of the Court of Errors and Appeals of New Jersey construing this act and decreeing according to the prayer of the complainants aforesaid above mentioned.

The act uses language directing the Secretary of the Treasury to "adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting Navy Agent at San Francisco, crediting him with the sum paid over to and receipted for by his successor January 14, 1850, and to pay to said Rodman M. Price or his heirs out of any money in the treasury, etc., any sum that may be found due upon such adjustment." The validity of this plea and subsequent answer was the subject of the controversy in the Court of Chancery below. The insistment of the defendants there in both pleadings was that, as heirs of Price, these moneys belonged to them; that the act contemplated a payment by the United States to Price or to his heirs; that the heirs were beneficiaries of the United States as such, and that the assignment by Price by virtue of the law of New Jersey, which made the appointment of the Receiver work such an assignment, did not pass this money.

It would seem that this insistment contends for an impossibility. The gift, if any, was made by the act of Congress and occurred at the time it passed; the language being to pay to Price or to his heirs could only be fulfilled by the payment to Price himself, for there could be no heirs till Price died; and so the argument and insistment of the appellants here must be that the act meant to say, "pay to said Price in his lifetime, or after his death to his heirs at law." On the part of the complainants, defendants in error here, the insistment is that the words "or his heirs" are simply words of succession and a description, so to speak, of Price's estate in the money. The thing dealt with is personalty, and so the words are used in the sense of "personal representatives," and the act simply by its language intended to secure the moneys to his estate in the event of his death before they are paid. Price died leaving children, who so became his heirs, but he might have had none. They might have died during the interval between the passage of the act and his own death. And then his heirs, that is the persons who would succeed to his lands, might be distant relations. What motive could lead Congress to contemplate a payment to distant connections such as might have occurred? This suggestion seems to me to demonstrate that the words, as we say, meant only the representatives of his estate, whoever they might be.

This case, in the lifetime of Price, was settled by the decree of the New Jersey Chancellor. The question was raised in the original suit and earnestly presented and argued. After careful consideration, it was decided by his honor, the present Chancellor, whose opinion on the subject will be found in the case of *Forrest* vs. *Price*, reported in 6 Dickinson's Reports, 25–26–27. The question has been also decided by the authorities in Washington. On the 11th day of July, 1894, the Comptroller of the United States delivered his written opinion upon the very question. It begins with saying that he was a member of Congress, voted for this act, participated in the debate which preceded it, had had to do with it in the Treasury Department, and is familiar with the origin of the claim, and all the facts that secured the passage of the act by Congress. And

then he says: "I am very clear in my own mind that it was not intended as a bounty to Mr. Price or his children, nor could it be Mr. Price thought in 1849 that he was acting within the meaning and construction of a certain law in regard to the appointment of acting pursers. As such he turned over to the acting purser who succeeded him a large amount of money and took his receipt for it, believing that he would be indemnified at the proper time by the Federal Government. I therefore think that the act of 1891 was based upon the idea that he held a fair, just, moral and equitable claim, if not technically legal, against the Government."

He then refers to the case of *Emerson* v. *Hall*, which is the case relied upon specially by the defendants, and he says, "In my opinion the case of *Emerson* v. *Hall* has no bearing whatever upon this case. In regard to the peculiar language of the act by the use of the words 'or heirs,' I find upon the examination of the law books that there have been a very large number of adjudications, probably a hundred, in the courts of the different States of the Union, as to their meaning in statutes as well as in various deeds and written obligations and other papers, as to what 'or' and 'and' mean, and I find that in nearly all the cases where either of these words, the conjunctive or disjunctive words 'and' or 'or' has been used, that it is almost universally without exception held that 'and' shall be construed 'or;' that 'or' shall be construed to mean 'and,' according to the fair meaning of law makers, gathered from the construction of the whole statute, and the circumstances that led up to the enactment of the statute. I therefore attach no special importance to the word 'or.' I believe that in fact the preferable word, under the circumstances, would have been the word 'and,' so as to conform to the old common law doctrine that the payment was to be made to Price and his heirs, meaning thereby that Price in his lifetime, if he lived long enough to consummate the settlement with the Federal Government, should obtain and take the money; if not, his heirs, according to the law of descent, take it under the laws of the domicile where Price lived at the time, and would be entitled in the ordinary way of descent to the amount." Further on he says: "I hold it therefore to be clear that after his death, if the word 'or' is to be construed 'and,' and if the subject matter of the act, the amount of money described in the act, is property, as I think it is, then the Court of equity having laid its power upon Mr. Price and obtained jurisdiction over this claim in New Jersey, that being the place of Price's domicile, his estate, this money included, would have to be distributed or descend according to the laws of the State of his domicile. I do not doubt but that it is within the power of a Court of Chancery to bring in all the heirs, hold them in the case, and proceed to adjudicate. And I apprehend, and I put it that way, without asserting it as a fixed fact, that while the Chancery Court would have the power to adjudge and decree as to the amount of money that might be due the plaintiff in the injunction, in the pending case, yet after its determination of the amount and judgment rendered, I apprehend the amount would have to be certified by judgment transcript to the Pro-

bate Court, and paid by the administrator or executor as a preferred claim in the Probate Court against the Price estate."

He then says: "I do not presume for a moment that the Chancery Court of New Jersey could issue an execution and compel the payment of this money, nor could any of its powers be brought to bear to compel, without at least additional legislation by Congress, the Comptroller to pay its judgment. But while that is true, yet on the other hand the Comptroller so far having awaited adjudication of that Chancery Court; ought to abide by the result of that litigation and await a final adjudication and certificate of the amount as to who are entitled under the laws of this State. This comes more from comity and from a disposition on the part of the Treasury officers to obey the laws of the land, and to help enforce the decrees of the Courts who have jurisdiction over matters in litigation of this kind, than from any actual authority that the Court may have over the Comptroller to compel him to make payment. In conclusion then, the Comptroller will not at this time act in this matter, but will say to the gentlemen that they must fight it out in the Courts of New Jersey, and that this Court will follow the final decision that may be rendered there."

The Comptroller in such a matter is a judicial officer, and it therefore appears that the only judicial authorities that could pass upon this act, have construed it according to the insistment of the complainants.

See the opinion of Chancellor McGill and that of the Comptroller of the Treasury, copied in the Appendix to this brief.

The case of the heirs of Emerson against Hall, 13 Peters 409, is cited as sanctioning defendant's plea. Emerson, Surveyor of the Port of New Orleans, with Chew, the Collector, and Lorraine, a naval officer, seized a brig for violating the law prohibiting the importation of slaves. At their sole expense, they instituted proceedings which resulted in the condemnation of the vessel and slaves. Money was raised by a sale, and these proceeds under the laws of the United States according to the decision of the Supreme Court, 10 Wheaton 331, could not be paid to these officers, but vested in the United States. Emerson died, leaving heirs. Thirteen years after the seizure, Congress passed an act entitled "An act for the relief of Chew and of the heirs of Emerson, and the heirs of Lorraine," 6 U. S. Stat. 464, and the preamble of the act stated that half of the proceeds would have been payable to these officers, but for an omission in the law. The question was whether the money appropriated to the heirs of Emerson was assets of his and liable to his debts. The Court held that Congress intended to pay the money directly to the heirs; that the act was not in recognition of a claim of Emerson having any foundation in law; that a benefit had been conferred on the Government, but this was not done at the request of any officer of the Government, nor under the sanction of any law or authority expressed or implied. The reasoning of the Court is that the claim of Emerson could not be enforced, but yet was a claim founded in equity and one which the Government ought to recognize. It was that the action of those officers was purely vol-

untary, not in the line of their duty, there being no obligation whatever on the part of Congress. The act evinces the purpose of Congress to make a gift to these parties. The Court held that there was no debt to the Government, that the act was simply a bounty on the part of Congress, and that under the statute the money had reached its proper destination. Says Mr. Justice McLean, delivering the opinion of the Court, "The Government might have directed the money to be paid to the creditors of Emerson, or to any part of his heirs. Being the donor, it could, in the exercise of its discretion, make such distribution or application of its bounty as circumstances might require, and it has, under the title of "An act for the relief of Emerson," directed in the body of the act the money to be paid to his legal representatives. That the heirs were intended by this designation is clear, and we think the payment which has been made to them under the act has been rightfully made, and that the fund cannot be considered as assets in their hands for the payment of debts."

Evidently this case is strong authority for the complainant below. In the body of the act the proceeds of the seizure and sale were to be paid over to the said Beverly Chew and the legal representatives of the said William Emerson and Edward Lorraine, respectively. The title of the act was, "An act for the relief of Beverly Chew, the heirs of William Emerson, deceased, and the heirs of Edward Lorraine, deceased." The statute then plainly shows that Congress used the word "heirs" and the words "legal representatives" as synonymous—exactly what we contend was meant by the use of those words in the act in question.

Price's claim was put on a business footing, and so regarded by Congress. The act of 1891 recognizes an advance by Price for the benefit of the Government, and used by it, to be a debt. The Secretary of the Treasury is directed to adjust, upon principles of equity and justice, the accounts of Price, as purser, to credit him with the sum paid over to and received by his successor in office, and to pay to Price or his heirs, out of the money in the treasury not otherwise appropriated, any sum that may be found due him upon such adjustment. Nothing could be clearer than the language of the act.

The reason for the action of Congress is concisely stated in a report from Senator Cameron from the Committee on Naval Affairs to the Senate, being Report 1339, Senate, 51 Congress, first session. It concludes thus: "In view of the loss of vouchers, through no fault of the claimant, your committee are of the opinion that the technical rulings of the department ought not to be enforced, but that the accounts ought to be adjusted upon fair and equitable principles, and that Purser Price ought to be credited for all the funds that he turned over to his successor, with which Van Nostrand charged himself and accounted for with the United States. We therefore report back the bill, and recommend its passage." Note that the title of the act is "An act for the relief of Rodman M. Price." The mention of "his *heirs*" occurs later, in that part of the act which directs the payment. These words, "or his heirs," do not in the least change the nature and true character

of the act. It is an ordinary act for the payment of an indebtedness of the United States. The transaction bearing date forty-one years previous to its passage, the act on its face advises the reader that Rodman M. Price was an old man. The not improbable contingency of his death happening before the accounts could be adjusted and any sum found due, led undoubtedly to the insertion of these words. Congress has no uniform method of wording private appropriation acts. In the fiftieth Congress there is an act "for the relief of the legal heirs" of one Livermore, and the secretary is directed to pay to his widow and administratrix money due him for services in commanding a camp in Michigan during the war, 25 U. S. Stat. 1034. On page 1071 will be found an act for the relief of the heirs of the late Solomon Spitzer, and many other instances might readily be cited. It is clear that the meaning of Congress was, that in case Rodman M. Price should die before the account had been adjusted and the sum due ready for payment, the secretary could pay it to the legal representatives of the said Price. The words "or his heirs" were unnecessary, and made no difference in the intent of Congress.

The accounts were adjusted and the sum found due in the lifetime of Price. Price, by will, could have devised this money, and the same, upon collection by the executor, if there were no debts, would have been payable to the devisee. The heirs of Price have no title founded upon the word "heirs" in the act. Their title, if any, is derived under the statute of distribution, as next of kin. And they say themselves in their answer (Record 43), that Price left no estate, real or personal, and that there is no property of his estate to come to them—that is, that they are not in fact his heirs. The decision of this Court in *Briggs* vs. *Walker* at its present term, sanctions the contention of the defendant in error.

But, again; Price, in law, received all this money, for he got part into his own hands, and part, according to law, he assigned. It passed to the Receiver. This part he left in the treasury, but nevertheless the assignment of it was legal and complete. Now, his legal representative, Mr. Borcherling, appointed receiver by the Court of Chancery comes and asks for it, and asks further, an injunction so that the heirs shall let it alone. Stress has been laid upon the use of the word "or." It is apparent that the heirs are mentioned only because of their connection with Price. Congress owed Price the money. So, whether the word "or" is used or the word "and," it really makes no sort of difference. Either expression would simply indicate the will of Congress that this debt should be paid, notwithstanding the previous debt of Price, and be paid as a debt to him. There was no reason supposable why his heirs should be preferred to any personal representatives. But "or" is often construed to mean "and," in order to effectuate the intent of parties.

Emerson *vs.* Taylor, 3 Halsted, 43.
Holcomb *vs.* Lake, 1 Dutch, 605.
Same case, 4 Zab., 688.
Den *vs.* English, 3 Harr., 280.
Den *vs.* Allaire, 20 N. J. Law (Spencer), 19.

The word "or" was construed "and" in an act of Parliament as old as 1 Vent., 62; *Engelfried* vs. *Woelpart*, 1 Yeates, p. 41-56. "Or" means "and" in the clause, "unlawful or forceable entry" in the statues of Wisconsin, *Witerfield* vs. *Stauss*, 24 Wis., 394, and in the American and English Encyclopœdia of law, volume 17, title "or," pages 218 to 222, many cases are quoted.

It has been already suggested that Rodman M. Price, deceased, in law, received and assigned this money, and, therefore, additionally, the claim of the defendants to it is invalid. A few words further on this topic may be useful.

As soon as the Secretary of the Treasury accounted with Price and passed to his credit a certain sum of money, that amount became an acknowledged debt of the United States to him, upon which he had a right to draw. He did draw some $45,000, out of about $75,000, and notwithstanding that by the injunction of the Court of Chancery issued in the original cause of which this is a revivor, he was forbidden from making use of that money, or from transferring the treasury orders by which it was paid, and was expressly directed to hand over these orders to the clerk of the court, and so engaged to do, through his counsel, in the presence of the Court, he nevertheless made use of this money, and thus was guilty of a contempt of Court, for which, had he lived, he would have been incarcerated. His conduct in that matter produced the Receivership. Mr. Borcherling was appointed Receiver in that cause, gave his bonds, was sworn in, and thus, in law, Price was deprived of all his property, and it was held, without authority on his part to deny it, that he had assigned all this debt to the Receiver. It is insisted here that neither Price nor any other party can deny that in law he came into possession of the particular money which is now the subject of adjudication. If the money was in private hands and could be sued for instead of being in the hands of the Government, the Receiver could bring suit for it, and in that suit no one would be allowed to deny that Price had received the money and legally assigned it to the Receiver.

Note in relation to this matter the following cases:

Harrison *vs.* Maxwell, 15 Vr., 319.
Wilkinson *vs.* Rutherfurd, 20 Vr., 245.
Williams *vs.* Herd, 140 U. S., 529.

The language of these cases is very sweeping as to the completeness with which legal assignments vest the estate of the assignor, even though his own hand is not placed to the instrument.

Stress was laid by the defendants below upon the proposition that this $23,000, still in the United States Treasury, held for its owner, belongs to them not only because of the language of the act of Congress, the force of which we have discussed, but because, as they say, the Court is without jurisdiction to order them to execute an assignment; because such an assignment will be void as against Section

3,477, Revised Statutes of the United States. Further, they claim that it is the administrator of Price and not his heirs who is liable, if any one, to the order of the Court.

These plaintiffs in error applied to the officials of the Treasury to have this money paid over to them as the heirs of Price. After full argument, the late Second Comptroller refused their application. But the Chancery Court of New Jersey having taken jurisdiction of the case as between Price and his judgment creditors, the department awaits the final action of the New Jersey Courts and of this tribunal.

This attitude of the department makes it unnecessary to follow in detail the cases cited by the defendants in the construction of Section 3,477, Revised Statutes.

It is needful only to ascertain the true meaning and purpose of Congress in passing that act originally entitled. "An act to prevent frauds upon the Treasury of the United States," 10th Stat., 170. It was passed, says the Court, through Mr. Justice Woods, in *Hebbs* vs. *McLean*, 117 U. S., 576, "in order that the Government might not be harrassed by multiplying the number of persons with whom it has to deal and might always know with whom it was dealing until the contract was completed and settlement made."

In 1877 the Supreme Court of the United States carefully considered the meaning of this prohibition against assignments. It was contended that the act of 1855 establishing the Court of Claims had repealed the act of 1853 because it spoke of claims assignable that might be sued in the Court of Claims. The Court, in denying this effect to the act of 1855, say: "At most it suggests that claims which are assignable may be sued in the Court of Claims in the name of the assignee, without undertaking to declare what claims may be assigned. That there may be such claims is clearly stated in the act of 1853, and there are devolutions of title by force of law, without any act of parties, or involuntary assignments, compelled by law, which may have been in view." *U. S.* vs. *Gillis*, 95 U. S., 416.

A little later the Court was called upon to pass upon the question whether the transfer of a claim to an assigneee in bankruptcy fell within the prohibition of the act. Erwin's case, 97 U. S., 392. The Court said:

The act of Congress of February 26, 1853, to prevent frauds upon the Treasury of the United States, which was the subject of consideration in the Gillis case, applies only to cases of voluntary assignments of demands against the Government. It does not embrace cases where there has been a transfer of title by operation of law. The passing of claims to heirs, devisees, or assignees in bankruptcy are not within the evil at which the statute aimed; nor does the construction given by this Court deny to such parties a standing in the Court of Claims."

In MacKnight against the U. S. (98 U. S., 179) the Court sustained a partial payment made at the treasury to an assignee.

The subject came up for further consideration before the Supreme Court in 1880 in *Goodman* vs. *Niblack*, 102 U. S., 556. Here it was

held that a general assignment made for the benefit of creditors, including all rights, credits, effects and property of every description, covered what might be due the assignor under a contract with the Government for carrying the mail. The opinion by Mr. Justice Miller indicates that the language of the opinion in *Spofford* vs. *Kirk* (97 U. S., 484) might well be modified. (See last paragraph on page 559.)

The language of Mr. Justice Miller in explaining the purpose of the act is so clear and has such an important bearing on the present case that we quote it as follows:

"We held it did not include a transfer by operation of law, or in bankruptcy, and we said it did not include one by will. The obvious reason of this is that there can be no purpose in such cases to harass the Government by multiplying the number of persons with whom it has to deal, nor any danger of enlisting improper influences in advocacy of the claim, and that the exigencies of the party who held it justified and required the transfer that was made. In what respect does the voluntary assignment for the benefit of his creditors, which is made by an insolvent debtor *of all his effects*, which must, if it be honest, include a claim against the Government, differ from the assignment which is made in bankruptcy? There can here be no intent to bring improper means to bear in establishing the claim, and it is not perceived how the Government can be embarrassed by such an assignment. The claim is not specifically mentioned, and is obviously included only for the just and proper purpose of appropriating the whole of his effects to the payment of all his debts.. We cannot believe that such a meritorious act as this comes within the evil which Congress sought to suppress by the act of 1853." Page 560–61.

From these decisions it is apparent that the object of the statute is, as expressed in the title, to prevent fraud upon the Treasury Department. It is not intended to protect a creditor of the Government against his creditors. The mischief to be remedied is the annoyance and danger to the officials of the Government while investigating a claim, which annoyance and danger may result from having to deal with other parties than the original creditor. This mischief disappears when by operation of law, in a court having personal jurisdiction of the parties, the rights and property of the defendant are transferred to his representative in law.

No mischief whatever is to be met and counteracted in the present case. On the contrary, the heirs of Price are claiming this money as against the estate of Price; and the subject matter is in controversy before a court having plenary jurisdiction of the parties. The officers of the Treasury have awaited the decision of the Court of Chancery of New Jersey.

No better safeguard could be asked than the decree of that Court. But from that decree the plaintiff in error appealed, only to be defeated in the New Jersey Court of Appeals, and after that to this Honorable Court, and for its decision the Treasury now waits.

In the process of announcing from time to time the construction of

this act the Court of Claims has uniformly been sustained by the Supreme Court of the United States.

The Court of Claims has an intimate knowledge of the theory and practice of the Treasury Department.

As might be expected, the question has arisen in the Court of Claims, and been passed upon as to the effect of the appointment by a State court of a receiver in proceedings supplementary to execution. The contractor was insolvent. His situation was like that of the defendant Price at the time of his death. The latter acceding to the plea had no property whatever, except, as we say, this balance on the books of the Treasury.

The case to which we refer is that of Redfield, receiver, against the U. S., decided 27th June, 1892, and reported 27 Court of Claims, 393. The facts are briefly as follows: William Mitchell, contractor for building life-saving station-houses, was entitled to receive in payment of his contract price, the sum of $12,536. On another contract of a similar character, there was due him a little over $2,000. A draft was made out to the order of Mitchell and sent to the Superintendent of Construction at New York to be delivered to Mitchell. But that delivery was to be upon a condition that Mitchell should come to the Superintendent's office and adjust a claim of certain persons for material furnished and labor performed in his said contract. Mitchell denied the right of the department to impose these conditions. He did not take the draft.

A judgment having been obtained against Mitchell in New York, execution issued and supplementary proceedings were had. The Court appointed Redfield receiver of all the property, rights, things in action, etc., of the judgment debtor. It seems also that Mitchell complied with the order of the Court in not transferring his property away. He executed an assignment to Redfield, the receiver, as the Court says, although the report of the case does not mention it. The receiver brought an action in the Court of Claims upon the contract. The United States denied the power of the claimant to maintain the suit. It is clear that the counsel for the Government made this objection with little hope of sustaining it, for the Court says that this power in the claimant "Although not seriously questioned by the defendant, is denied, and we are called upon to pass upon his legal capacity to recover what may be due Mitchell." Page 399.

The Court were unanimously of the opinion that the receiver could maintain the action.

Weldon, *J.*, * * * * The plaintiff is not only a receiver, appointed by the Supreme Court, State of New York, sitting in the city and county of New York, but he has the additional claim of being the assignee of all demands against the United States on the part of Mitchell, the assignment being executed for the purpose of enabling the claimant to more effectually perform the duties of receiver under his appointment by the Supreme Court of the State of New York. It may be that the personal assignment by Mitchell to claimant, it being for the indebtedness of the United States only, would not have the

effect to transfer the claim to him, but his appointment as receiver under the order of the Court has, in our opinion, that effect. It was held in the case of *Erwin* vs. *The United States*, (97 U. S. R., 392), "The act of Congress of February 26, 1853, to prevent frauds upon the Treasury of the United States, which was the subject of consideration in the Gillis case, applies only to the voluntary assignment of demands against the Government. It does not embrace cases where there has been a transfer of title by operation of law. The passing of claims to heirs and devisees, or assignees in bankruptcy, are not within the evils at which the statute aimed; nor does the construction given by this Court deny to such parties a standing in the Court of Claims."

In the case of *Goodman* vs *Niblack* (102 U. S. R., 556), it was held that section 3477, Revised Statutes, did not prevent a claim from passing to an assignee under a general assignment for the benefit of creditors. The Court said: "In what respect does the voluntary assignment for the benefit of creditors which is made by an insolvent debtor of all his effects, which must, if he be honest, include a claim against the Government, differ from an assignment which is made in bankruptcy?"

In this case, it is true no assigament in bankruptcy could be made, and no assignment of all the debtor's effects is shown; but the appointment of the claimant as receiver in the proceeding in the State of New York has the effect of transferring to him the title of all the choses in action of Mitchell, and if the voluntary assignment to claimant by Mitchell (it being for the claims against the United States and not all his property) did not have that effect, it has the effect of curing any and all defects as to the legality of the appointment of claimant so far as the judgment debtor is concerned. The reasoning of the Supreme Court in the case of *Goodman* vs. *Niblack*, in favor of assignees in bankruptcy and voluntary assignees of "all effects" by the debtor, properly applied, will sustain a receiver appointed by a court of competent jurisdiction in asserting the same title to choses in action which might as against the Government be asserted by assignees in bankruptcy and under deeds of general assignment."

The fact that the United States did not seriously question the power of the receiver, and the further fact that no appeal was taken, although the sum for which judgment was given was $15,046, show conclusively that the position of the Court is accepted at Washington as judicially sound.

There could be no doubt that the order of the Chancery Court, requiring Price to assign to Borcherling, receiver, all his property and things in action invested the receiver with full power. (See Record, pp. 4-16.) Price did not comply with the order. The same order can now be made upon an administrator. Had Price lived, and contemptuously refused to obey the order of the Court, a certified copy of the record stating the fact would have been sufficient for the purposes of the Treasury Department.

The defendant's brief argues: "The very thing that the act seems to be aimed at is to prevent a man from being compelled in any way

to make such an assignment, or to carry it into effect by pressure outside, either that of a court or otherwise."

In reply we say, first, in the present case there is no such "Claim" pending as is the subject of the case cited by the defendants. Here there is nothing pending except the question to whom shall we pay over an ascertained balance due upon the accounts of an ex-navy officer. There is no question of fact to be gone into as to the establishment of an indebtedness on the part of the United States. The sole question is, to whom can the United States with safety and convenience pay the money. Second, counsel misconceives entirely the decision in *St. Paul and Duluth R. R. Co.* vs. *U. S.*, 112 U. S., 733. All that that case decided is that the voluntary transfer of a claim against the United States for compensation to a railroad company for carrying the mail, made to another company, by way of mortgage, does not fall within the principles of exception to the statute such as an assignment by operation of law, and voluntary assignment for the benefit of creditors generally. The Court says also in effect that the fact that the mortgage is foreclosed by judicial action does not make it an assignment by operation of law.

This was not, as the counsel seem to think, the working of a forfeiture of a voluntary assignment by the interference of a court. It is simply an assignment by the party himself outside of the court, intended to convey his rights in a claim against the United States to another party. It does not appear that the assignor sought in any way to be relieved from the effects of its attempted assignment. Certainly the decision is of no authority to sustain the point that the receiver of all a man's property does not take, by virtue of the assignment, a claim against the United States.

Williams vs. *Heard*, 140 U. S. 529, holds that an assignee in bankruptcy does take such a claim by virtue of the assignment created by law. See also *Comegys* vs. *Vape*, 1 Pet. 193; *Milnor* vs. *Metz*, 16 Pet. 227; *Phelps* vs. *McDonald*, 99 U. S. 298; *Erwin* vs. *U. S.*, 97 U. S. 392; *Bachman* vs. *Lawson*, 109 U. S. 659.

Counsel for defendants are obliged to take the position that the claim of Rodman M. Price was not legal or valid either in law or at equity. They argue that in the St. Paul case the transfer of the claim was made by a judicial sale, and hence would have it understood that the order of the Court making Borcherling Receiver is void as against the statute.

The objection to the right of the St. Paul & Duluth R. R. Co. to recover in the Court of Claims was not based upon the fact that it took by foreclosure under the mortgage, but that the attempt of its predecessor to make a transfer by mortgage was itself contrary to the statute. The proceeding in court was that of an ordinary foreclosure of a mortgage, professing to convey lands, tracts, bridges, station houses, rolling stock, franchises, etc., etc. A claim against the United States did not pass under such a mortgage. The Court in its proceedings was carrying into effect the voluntary action of the mortgagor so far as could be legally done. This St. Paul case will be found in 18 Court of Claims,

405. If it had any relevancy to the question pending in Redfield against U. S. we may be sure it would not have escaped the attention of counsel and Court in that suit.

Counsel for plaintiff in error seeks earnestly to induce the Court to adjudge that the New Jersey Court had no jurisdiction, because the money in this case lies in the hands of the Government.

But nothing in the bill or the decision below makes or seeks to enforce any claim against the Government, or asks for a decree that the Government pay the Receiver the money, or even seeks to require the plaintiffs in error to make assignment of any right they may have to the money.

The bill alleges that the plaintiffs in error are without right, and of course makes no prayer for their assignment of the right they set up.

But the bill and the decision below deal with the plaintiffs in error, defendants below, as citizens of New Jersey, and the bill prays and the decrees order an injunction against their seeking to obtain this remnant of the originally sought fund from the Treasury, which, it says, holds it as voluntary stakeholder, ready to pay to whomsoever the courts say it should be paid. No further prayer is made, except that the court would decree the defendants below, if they received any of the money, to pay it over. And the bill thus prays, and the courts decide in favor of the prayer, asserting that the right to the money belongs to the Receiver, one of the complainants, because the court, having jurisdiction of the parties has thus decided in the original suit, and because intermeddling with it, without property in it, is contempt of the court that so decided, which directs its Receiver to get it.

And it declares that the money does not belong to the defendants' children though they are of Rodman M. Price, because first, it had passed to the Receiver by Jersey law, with all the assets of Mr. Price, and if not, by title made by the order of the chancery court in the cause to which he was a party, and because it was money in the hands of the Treasury, which, if not already assigned to Borcherling, the Receiver by force of law, did not belong to Price's children but to his administrator *pendente lite*, who was made party to the suit.

The jurisdiction is personal over the children, who claimed right as heirs, citizens of New Jersey, parties in the suit, to prevent their doing wrong to the complainant and depriving the court of property that through the receivership was, in the eye of the law, in the hands of the court itself as trustee for those entitled to it.

To this bill the defendants below, by pleas and subsequent answer set up two replies in defence, saying first, that the Receiver had no right to the money because there was no such assignment as required by the Revised Statutes, Section 3477, and because the act of 1891 for the relief of Rodman M. Price, made them, his children, the owners.

The argument already delivered on the side of the Receiver and Mrs.

Forrest answers all that has been urged by counsel on these, the only two matters over which this Court has jurisdiction. Further reply shall be brief. It must be to a great extent repetition.

1. Section 3477 refers to voluntary assignments only, not those which occur by operation of law.

In *St. Paul & Duluth R. R.* vs. *United States*, the mortgage foreclosed was a voluntary, though conditional assignment, void *ab initio*, because disobedient to the statute, and was not made lawful, because freed from the conditions, and completed in form by the decree of foreclosure.

In *Spofford* vs. *Kirk*, a contract was sought to be created out of voluntary action by Kirk, who gave orders in favor of third parties, for payment out of funds due him from the Government. The Court refused to imply a lawful contract of assignment of these funds from this voluntary action which did not pursue the statute.

United States vs. *Gillis* was, again, a simply voluntary assignment of a claim against the Government, declared to be inoperative on general principles, to entitle the assignee to bring suit in his own name, and further declared, though the suit below was in the Court of Claims, to be a void assignment because of the statute, and because voluntary.

The reasons given with such pungent force by Mr. Justice Miller, based on the mischiefs intended to be remedied by Section 3477 of the Revised Statutes, give the criterion as to the validity of any assignments.

Then only the question remains, did the appointment of the Receiver operate in law to create an assignment?

That question is answered by the courts below. It is the law of New Jersey which settles that; a law which the courts of New Jersey expound and which this Court will not.

The brief of plaintiff in error however vindicates the courts of New Jersey by copying the statute of New Jersey of 1875, (see brief, p. 37.) Counsel says the receivership in this case is solely for the benefit of one creditor. Not so; it is for his benefit in the first instance, but after paying him other creditors may also be paid, just as in bankruptcy or insolvency, and there may be preference, if the statute so directs, and payment of any creditors, whether or not mentioned by the debtor, after these preferences given.

This act, as stated in the brief for plaintiffs in error, authorizes the appointment of a Receiver of "the property and things in action belonging to, *or due to*, or *held in trust for*, said debtor as aforesaid, who *thereby* shall receive authority to possess, receive, and in his own name as such receiver sue for all such property and things in action, and the evidence thereof, and the said Chancellor may order said judgment debtor to convey and deliver to said Receiver all such property and rights in action and the evidence thereof, and said Receiver shall in

all respects be subject to the authority of the Chancellor in accordance with the practice of said Court, and shall and may dispose of the said property and things in action in conformity with the final decree in said cause."

The character and rights of a like Receiver appointed in proceedings supplementary to executions at law by judges of law courts, are reviewed in the case of *Miller* vs. *McKenzie*, 2 Stewart, 292, by the late Chief Justice Beasley. The language of the act in such cases as to the rights of receivers is identical with that in the act quoted in the adversary's brief, and the distinction between receivers of two classes, one, using the words of the Chief Justice, "who are appointed the custodians of property, *pendente lite*, by a court of equity, and the other appointed under the statute," does not refer to such receivers as Mr. Borcherling. So the language of the Chief Justice is descriptive of the Receivership of Mr. Borcherling, and he says: "With regard to the personal property of the debtor, and it alone is here in question, it seems plain to me that one of these Receivers by the act *appointing him becomes vested with the title*. Defining the effect of his appointment the act says, "that he thereby shall receive authority to possess, receive, and if need be, in his own name as such Receiver, sue for, such property or things in action." These terms are quite comprehensive, and the statute being a remedial one, it would have been illegitimate to limit their effect unless compelled to such course by very cogent considerations."

The other act (Rev. N. J., 1876, p. 394), regulating supplementary proceedings at law, has this language not in the Chancery act, viz.: "And it shall be the duty of such Receiver to apply the same (the property) in payment of the said judgment, and the acts of the proceedings thereon and the reasonable compensation of the Receiver to be taxed by the judges, and to pay the rest into said court wherein said judgment was recovered and docketed, to be there disposed of according to law."

This clause maps out the duty of the Receiver appointed in equity proceedings either to pay any surplus into the Court where the judgment was recorded, or more likely, by virtue of its inherent powers, to call other creditors and defendant into Court, and according to rights in each case distribute the money.

In other words, this act makes the Receiver trustee, first for the creditor, who sues, then for the other creditors—just as in bankruptcy and insolvency, judgment creditors have preference in distribution—and several judgment creditors according to priority of liens.

It is urged that the cases settling that assignments by operation of law are not affected by the statute 3477 do not apply to this case, but only to cases of bankruptcy, insolvency and the like. The answer is that every reason given by the Court in the adjudicated cases for

making such assignments valid, and holding them not within the statute, applies to the case of a receiver, when the man does not in fact assign but the law does for him, nay, may compel him to do so. And in accordance with this is *Redfield* vs. *The U. States*, already cited.

Receivers, vested with statutory power to collect the property of a litigant whenever found, are held in New Jersey to be authorized to sue for it there, although the Receiver was the officer of a court in another State.

Hurd *vs.* Elizabeth, 41 N. J., (L.) p. 1.

The ruling of Chief Justice Beasley, in *Miller* vs. *MacKenzie* has been followed ever since in New Jersey and elsewhere, and is familiar law in text books. See *Harrison* vs. *Maxwell*, 44 N. J. (L.), p. 348; 15 Vr., 348; *Wilkinson* vs. *Rutherford*, 20 Vr., 245; *Williams* vs. *Heard*, 144 U. S., 529; High on Receivers, § 442; Freem. on Executions, § 420.

Argument, however, on this point is superrogatory. The courts of New Jersey have so held in this case and it is not a Federal question whether they were or were not right in expounding their own laws.

If the Court is with us here, there is an end of the matter. The money claimed by the children of Mr. Price was admittedly in the U. S. Treasury, held for him on the 10th of October, 1892. See Plaintiff's Brief, p. 5. That was the date when the Receiver was appointed. It then became the Receiver's property.

Nobody except the plaintiffs in error claim it. They reside in New Jersey. They can set up no claim because it is in the District. Nor are they creditors of their father.

The case then does not necessarily call for a construction of the act of 1891—the act whose title is "An act for the relief of Rodman M. Price"—not of his children. It will not be disputed that Price had the legal right had there been no receiver or injunction to take the whole money. Nor did the children make claim till the day after his death.

Yet it is proper to discuss this part of the case; the part to which most attention was paid in argument below.

Counsel for the plaintiffs in error contend that the plaintiffs in error are original takers under the act.

Original takers when? Not when the act was passed, for it was "An act for the relief of Rodman M. Price," by its title, and the body of the act makes the money payable to Rodman M. Price *or* his heirs.

He had no heirs then—nor could he have. He had children—but

not heirs. His death must occur before he could have any heirs, whether of his body or collateral.

Call "or" "and," if you like, the case is the same. "*Heirs*" necessarily contemplates succession. Yet, a gift to a man *and* his heirs is the strict technical method of describing an estate in fee—an estate in lands—nothing else. And, then, if the man conveys, his heirs when he dies, have nothing. The estate is gone.

When the language is, to R. M. Price *or* his heirs, there can be but one meaning. The money is to go to Rodman M. Price if he is alive when it becomes an acknowledged debt, and asks for it—if not then alive, then to those who will, in common parlance, be heirs of personalty, that is to say, his personal representatives, his executors or administrators.

The whole view of the other side is based on one sentence contained in the brief, page 41, near the bottom. Speaking of the act, counsel says, "It confers a gratuity; it does not pay a debt." And he adds, "It will not admit of any other construction." Yet all the judges before whom the question up to this time has come, adopt a different construction, and just because it is so plain that the act admits a debt, and seeks to pay it.

Rodman M. Price was a Purser in the United States Navy and Acting Navy Agent; he had *accounts* with the United States; they had not been *adjusted;* he had made claim to Congress that he had *paid* over moneys to his *successor* in office, which was receipted for by him January 14, 1850, wherefore the Secretary of the Treasury is directed to *adjust* these accounts upon principles of equity and justice—the two words are synonymous—to *credit* him in this adjustment with the sum he had a receipt for, and to pay over to him any sum that might be found *due* to him upon such adjustment.

Is it not idle to talk of this as conferring a gratuity? And again, the title of the act accords. A creditor is relieved who gets his debt.

Every presumption is against gratuity. Counsel say Mr. Price was poor. Did Congress know that? And is that a reason generally actuating acts for relief like this? And if it was simply charity, why leave it to the Treasury to examine and settle accounts to fix the sum that was to go to him?

And why, especially, should Congress make a gift to "his heirs?" Did it know that he had children? Did it mean to give the money of the country, in what amount they would not themselves even decide, to any heirs Mr. Price might have, however far removed from him collaterally?

Bills of relief in Congress are not models of exactness in the use of legal words. Succession is indicated as their intention sometimes by the word "heirs;" sometimes by "legal representatives;" sometimes

by "representatives and heirs;" sometimes by "legal representatives or heirs," and the courts are left to determine the intention from the nature of the payment and all apparent circumstances leading to the legislation.

The brief opinion of Chancellor McGill in the original case, given before Governor Price's death, printed as an appendix to this brief, and the exhaustive discussion of the case by Mr. Justice Lippincott, of the New Jersey Court of Errors and Appeals, which is to be found in the Record, make the argument on the part of defendants in error unnecessary.

It may be well shortly to notice certain views and statements made in the argument of the learned counsel for plaintiffs in error.

On page 24 notice is taken of the fact that no final decree was made in the original cause which the bill in this case revived. How could there be, when Mr. Price died intestate, and no administration was ever taken out, except that *pendente lite* found in this case, and confined to it?

On page 25, counsel states two questions as arising—first, as to the power of the Court of Chancery to make a decree enjoining the defendants, the plaintiffs in error, from applying for or receiving the moneys in question in the absence of an adjudication as to the rights of the matter. But the overruling the pleas, and the decree following the answer, do adjudicate as to the right of the matter. And yet this is not a Federal question.

On page 25, it is argued that the order appointing the Receiver has no binding effect upon plaintiffs in error, not being parties to the suit, and by which it is said they are not bound as heirs because they have no assets. But any transfer of Price's property binds all the world. It is a fact, the validity and effect of which is like a deed.

As to there being no adjudication in this cause, which is also said on this page, how, then, are the plaintiffs in error here?

On the same page, 25, the effect of the order appointing the receiver is attacked, because of alleged want of proceedings to carry it into effect.

But the decision below is final as to this.

And it is founded on the statute quoted in plaintiff's brief, and heretofore reviewed in this.

On page 29, the power of the New Jersey Courts to compel plaintiffs in error to assign said claim, to collect the moneys and pay them over is assaulted because they have not the right to operate upon the chose in action itself, and that, therefore, they had no jurisdiction to enjoin defendants from proceeding to the collection themselves.

Again, whatever question is here raised is not a Federal question. It belongs to New Jersey Courts to settle their own practice.

The plaintiffs in error bring up two decrees—one, that of the Court of Errors and Appeals quoted on page 14 of their brief, denying the right of the plaintiffs to the money, and asserting that of Borcherling, the defendant in error to have it paid to them. The other decree—p. 19—simply decrees the injunction prayed for in the bill and costs.

"Assignees" in bankruptcy and insolvency are "Receivers" under another name. They have the same authority, title to property, and duty—are officers of courts—and in all respects have like character. At any rate. such is the case in New Jersey.

The word "Receivers" is generally used in regard to corporations. But in New Hampshire "Assignee" is the title of those who are what in New Jersey we call receiver. And this, it is believed, is true in other States.

In conclusion, reference is respectfully made to the opinion of the Court of Errors and Appeals contained in the Record, and to the head note thereof, drawn by the Justice who delivered it, in 9 Dick., Ch. 669, briefly embodying it. A unanimous Court, ten Judges sitting, seven of them Justices of the Supreme Court, affirmed the Chancellor, deciding that the act for the relief of Rodman M. Price gave his children no right to the money in the Treasury, and that *his* right therein lawfully passed to the Receiver appointed by the Chancellor in the suit against him by the administratrix of Samuel Forrest, a judgment creditor.

CORTLANDT PARKER.
RICHARD WAYNE PARKER.
FRANK W. HACKETT.
Counsel for Defendants in Error.

TREASURY DEPARTMENT,

SECOND COMPTROLLER'S OFFICE.

Washington, D. C., July 11th, 1894.

Claim of the heirs of Rodman M. Price for balance due and unpaid under the act of February 23, 1891, and protest of Frank W. Hackett.

The comptroller was a member of Congress and participated in the debate, and voted for the Price act of 1891. Since that time he has had to do with it in the treasury department, until he thinks he is familiar with the origin of this claim, and all the facts that led up to and secured the passage of that act by Congress.

I am very clear in my own mind that it was not intended as a bounty to Mr. Price, or to his children, nor could it be. Mr. Price thought in 1849, that he was acting within the meaning and construction of a certain law in regard to the appointment of acting pursers. As such, he turned over to the acting purser who succeeded him, a large amount of money, and took his receipt for it, believing that he would be indemnified at the proper time by the Federal government. I, therefore, think that the act of 1891 was based upon the idea that he held a fair, just, moral and equitable claim, if not technically legal, against the Government.

In my opinion, the case of *Emerson* v. *Hall* has no bearing whatever upon the case. In regard to the peculiar language of the act by the use of the words "or heirs," I find upon an examination of the law books that there have been a very large number of adjudications, probably a hundred, in the courts of final resorts of the different States of the Union, as to their meaning in statutes, as well as in various deeds and written obligations, and other papers—as to what "or" and "and" mean—and I find that in nearly all the cases where either of these words, the conjunctive or disjunctive words, "and" or "or" has been used, that it has almost universally, without exception, been held that "and" shall be construed "or," and that "or" shall be construed to mean "and" according to the fair meaning of the law-makers, to be gathered from a construction of the whole statute, and the circumstances that led up to the enactment of the statute.

I therefore attach no special importance to the word "or." I believe that, in fact, the preferable word under the circumstances, would have been the word "and," so as to conform to the old common law doctrine, that the payment was to be made to Price and his heirs; meaning thereby that Price in his lifetime, if he lived long enough to consummate a settlement with the Federal Goverement, should obtain and take the money; if not, his heirs according to the law of descent, to take it under the laws of the domicile where Price lived at the time, who would be entitled in the ordinary way of descent to the amount

I now come to the actual condition of affairs. First, the Comptroller is well persuaded, and that, too, by Federal authorities, and upon general principles, that no action can be done that in point of technical

authority would hinder or obstruct the Federal Government in the payment of this money, if the Government were fully determined to exercise that right. Public policy forbids that the Federal Government should be hampered in the payment of its debts, and so where process is directed against any of the officers of the Treasury Department to prohibit them from making a payment, according to the decisions of the Federal Courts, such process would be held null and void. But it seems that some of the courts are disposed to practically avoid such a condition of affairs by non-interference with the Federal Government, or its officers, but visit their penalty and punishment upon the payee, and undertake by injunction to prevent him from receiving the money that the Government would otherwise pay him, or that may justly be due him from the Government. That is this case. The Chancery Court of the State of New Jersey, by injunction, laid upon Governor Price in his lifetime, its plenary power to forbid him to receive the money under contempt and punishment.

If I understand the doctrines of equity correctly, they are when a court of equity once gets hold of a subject-matter, it will hold it to the end, and will, if necessary, bring in additional parties from time to time, and will undertake to do complete and exact justice among all the claimants in one adjudication over the matter in dispute or *res*. The Court did that so far as Mr. Price was concerned in his lifetime. So long as Mr. Price was alive, undoubtedly his heirs had no interest nor control over the money, nor could they in anywise interfere with his disposition or management of it, or his right to receive it.

I hold it, therefore, to be clear that after his death, if the word "or" is to be construed "and," and if the subject-matter of the act, the amount of money prescribed in the act, is property, as I think it is, then the court of equity having laid its power upon Mr. Price, and obtained jurisdiction over this claim in New Jersey, that being the place of Price's domicile, his estate, this money included, would have to be distributed or descend according to the laws of the State of his domicile. I do not doubt but that it is within the power of a Court of Chancery to bring in all the heirs, hold them in the case, and proceed to adjudicate it, and I apprehend, and I put it that way without asserting it as a fixed fact, that while the chancery court would have power to adjudge and decree as to the amount of money that might be due the plaintiff in the injunction in the pending case; yet after its determination of the amount and judgment rendered, I apprehend the amount would have to be certified by judgment transcript to the probate court and paid by the administrator or executor as a preferred claim in the probate court against the Price estate.

I do not presume for a moment that the chancery court of New Jersey could issue an execution and compel payment of this money, nor could any of its powers be brought to bear to compel, without at least additional legislation by Congress, the Comptroller to pay its judgment; but while that is true, yet on the other hand, the Comptroller so far having awaited the adjudication of that chancery court, ought to abide by the result of that litigation, and await a final adjudi-

cation and certification of the amount, as to who are entitled under the laws of that State.

This comes more from comity, and from a disposition on the part of the treasury officers to obey the laws of the land, and to help to enforce the decrees of the courts that have jurisdiction over matters in litigation of this kind, than from any actual authority that a court may have over the Comptroller to compel him to make payment.

In conclusion, then, the Comptroller will not at this time act in this matter, but will say to the gentlemen, that they must fight in out in the courts of New Jersey, and that this court will follow the final decision that may be rendered there. I have given this matter very considerable thought since Mr. Fay filed his claim, and since you, Mr. Hackett, filed your protest. Not only that, I have taken a number of the law books and looked them through upon such points as suggested themselves to me; and the Comptroller is pretty well satisfied that this is a just, honorable, and fair thing for him to do by all parties. Hence this matter will be suspended until such time as the Comptroller may be put into possession of the final decree, either of the New Jersey chancery court, or such court as may have appellate jurisdistion therefrom.

C. H. MANSER,
Second Comptroller.

IN CHANCERY OF NEW JERSEY.

FORREST,
vs.
PRICE.

[Extract from the opinion of Mr. Chancellor McGill, reported in 7 Dickinson (52 N. J. Equity) Reports, pages 23 to 30.

THE CHANCELLOR.

The proceeding in which the orders contemned were made is designed to quickly discover and secure assets of a judgment debtor which cannot be reached by execution, and among them moneys due to the judgment debtor from another or others. When it is made to appear that there are such moneys, the statute expressly authorizes the court of chancery to restrain the debtor from transferring them and to require him to assign and deliver them to a receiver. *Rev. p. 121.*

It is not controverted that when the court took action in the present matter, by the orders in question, the defendant Price had become entitled to moneys from the United States government. The act of congress had established his claim and the proper accounting officers had ascertained it. It remained only for the defendant to receipt for the moneys and obtain possession of them. They were in substance his property. *Goreley* v. *Butler, 147 Mass. 8, 10; affirmed by the United States Supreme Court, 146 U. S. 303.*

It was after the sum due to defendant was ascertained that the court, by its order, forbade the defendant to endorse or transfer any drafts that might be delivered to him in payment of his property, and to assign to its receiver all moneys that remained undrawn from the United States treasury.

It is no excuse in a proceeding for contempt that the orders contemned are erroneous in law. The method of correcting such error is by appeal, not by disobedience. When a person is proceeded against for disobedience to an order or judgment, he cannot allege in defence that the court erred in that order or judgment. To be successful he must go further and make out that there was, in legal effect, no order, by showing that the court had no right to judge between the parties upon the subject. *People* v. *Sturtevant, 9 N. Y. 263, 266; Una* v. *Dodd, 12 Stew. Eq. 173, 180; S. C. on appeal, 13 Stew. Eq. 672, 706.* Recognizing this well-established principle, the defendant denies the jurisdiction of the court to make the orders here in question, upon three grounds—*first*, because the fund is a governmental bounty to him, designed for his personal maintenance and comfort, and therefore is not liable to application to the satisfaction of the judgment of the complainant, however meritorious it may be; *second*, because the restraint of the endorsement of the governmental drafts tended to interfere with and delay the fiscal operations of the government; and, *third*, because

the assignment of the moneys to a receiver, as contemplated by the orders of October 10th, 1892, and December 21st, 1893, would contravene the letter and policy of the law enacted in the three thousand four hundred and seventy-seventh section of the Revised Statutes of the United States and be a nullity.

In *Munday* v. *Vail*, *5 Vr. 418*, *422*, Chief-Justice Beasley defined jurisdiction to be the right to adjudicate the subject-matter in a given case, to constitute which it is essential that the court must have cognizance of the class of cases to which the one adjudged belongs; that the proper parties shall be before the court, and that the point decided must, in substance and effect, be within the issue made by the pleadings. Testing the present case by the definition thus given, we first ascertain that its subject matter is the application of the defendant's established and ascertained property in possession of the United States to the satisfaction of the complainant's judgment. That this court has cognizance of this class of cases is not disputed. The defendant is regularly before the court, and the points to be decided are clearly within the issues presented by the pleadings. To urge that the particular money in question is exempt from the application desired, is to present a defence upon the merits of the case, and to object that the temporary restraint of the endorsement of drafts will hinder and delay the fiscal operations of the United States, is to offer a reason why the court should not continue its temporary restraint, and so the insistment that, under the section of the United States Revised Statutes which has been referred to, the assignment to a receiver would be a nullity, may be a reason why the court should not order it to be made. None of these matters, however, go to the court's jurisdiction—they are defences properly belonging in the cause which the court has power to adjudicate upon. If the court err in that adjudication, the remedy is by appeal.

Confusion is avoided by bearing in mind that this suit is not a proceeding against the United States nor directly against a fund in its possession, but a proceeding *in personam* against the defendant Price.

But, assuming that the contentions of the defendant properly question the court's jurisdiction, let us examine their merits.

No tenable ground upon which the first can be rested has been suggested in behalf of the defendant. His connection with the United States navy was severed some forty or more years ago. It does not appear that he now owes the government any duty, for which this fund is designed to maintain him. The case bears no resemblance to the unearned half pay of a retired officer, which is protected because of the service he may be called upon to render. *Schwenk* v. *Wyckoff*, *1 Dick. Ch. Rep. 560.* I apprehend that a claim actually established, so that it now is property of the claimant, even though it spring from pure bounty, is not, in absence of express legislative provision to the contrary, exempt from the claimant's debts. The act for the relief of the defendant does not intimate that the provision it makes is a sacred bounty.

But it affirmatively appears that the money, of which the statute

authorizes payment, though not a legal claim, is not pure governmental bounty.

The provision in the act for the relief of the defendant Price, that payment should be made to him "or his heirs," has been urged as indicative of the legislative intention that the payment was not intended to benefit creditors. I do not so understand the act. The expression "or his heirs" was undoubtedly a provision against his death before the day of payment, and there can be no substantial doubt that it is used in the sense of personal representatives, the thing dealt with being personalty, and appears in the act to secure the moneys to his estate in the event of his death before they are paid.

The direction of the statute is to credit the defendant with a sum of money which he, many years ago, loaned to an officer and agent of the government for the use of the United States, and which that officer received in his official capacity for the purposes of the government. That officer was the successor of the defendant in a mission in which the defendant had been specially charged with the duty of going into a new and unsettled country, at a time when the inhabitants, as history records, had become mad in speculations, to establish a credit for the government. The method of establishing that credit, it is true, was prescribed, but it was difficult to literally follow the requirements of the prescription. Exigencies demanded that moneys should be had. Of necessity, the government officials, five thousand miles, in course of usual travel, from home, were obliged to exercise some discretion. It was in this situation that the defendant Price advanced to his successor $75,000 of his private moneys for the use of the United States. The receipt of such a loan for the government was beyond the scope of that successor's authority, and the moneys never having, in fact, been applied to the use of the government, the receipt of them was not ratified or recognized, and hence the defendant was subjected to a loss.

After many years, congress reviewed the transaction, and, recognizing in it a moral obligation upon the United States, directed that credit be made to the defendant for the amount of his advance. The environments of the whole situation, when the loan to Van Nostrand was made, evinced to congress an appropriateness in the transaction and admitted of the advance being made in good faith, for the benefit and convenience of the United States. That it was made in good faith does not appear to have been doubted. The congressional proceedings show that it was upon consideration of these facts that the burden of the loss, without interest, was thrown by congress upon the public treasury. The statute was designed to restore to the defendant his property, which, in good faith, he had entrusted to an officer of the United States for the benefit of his principal.

I do not find in this situation even the bounty of a grateful government, partaking of the character of a pension or reward for a meritorious deed, but simply the restitution of property which had once belonged to the defendant, as assets for the liquidation of his pecuniary obligations; and I fail to understand how, upon its restoration to the defendant, it can be held to assume a new character.

Upon the second insistment, it is not perceived how the restraint of the endorsements of any drafts which should be delivered to the defendant pending the return day of the order to show cause, dated August 8th, 1892, would have materially interfered with the fiscal operations of the government. The restraint operated upon the defendant, not upon the government. It substantially forbade him to draw the money upon the drafts, leaving the government to pursue such course in the event of his failure to draw, that its regulations or practice permitted. Besides, the restraint was limited to a short day, when the defendant would be heard upon the question whether a receiver should be appointed. That delay, in point of fact, proved to be exactly one week from the delivery of the drafts. It has not been suggested how such a delay could operate prejudicially to the public service. I am not referred to any law, rules, regulations or policy of the governmental departments which show that such a delay, or kindred delays, can so operate. That it did not infringe governmental regulations amply appears by the fact that two of the four drafts were not endorsed and presented by the defendant for payment until the 3d of October, and were then paid, so far as appears, without objection.

It is unnecessary, under this state of facts, to discuss the question whether this court would have power to make an order which would directly or indirectly inconvenience and impede the fiscal operations of the United States. The order in question does not appear to have been of that character.

The third insistment of the defendant that an assignment of moneys in the United States treasury, as directed by the orders of October 10th, 1892, and December 21st, 1893, to the receiver, would contravene the policy of the law of the United States, and that, therefore, the orders were not within the jurisdiction of this court, remains to be considered. Upon this insistment the greatest stress had been laid. It is to be observed that the section of the Revised Statutes which is referred to declares that all assignments of claims upon the United States shall be absolutely null and void unless they are freely made after the allowance of the claim, the ascertainment of the amount due and the issuance of a warrant for its payment. This section was taken from a statute of 1853, which was entitled "An act to prevent frauds upon the treasury of the United States." The purpose of congress, in its enactment, inferentially was to protect the government from the necessity of dealing with those who were not directly and originally concerned in the claim—that is, with strangers to it whose numbers and possibly merely speculative interests in it might embarrass its speedy and just allowance or denial. *Spofford* v. *Kirk*, *97 U. S. 484*; *Goodman* v. *Niblack*, *102 U. S. 556*; *Bailey* v. *United States*, *109 U. S. 432*; *Freedman's Savings and Trust Co.* v. *Shepherd*, *127 U. S. 494*.

Viewed in the light of a protection to the government, it has been held that the statute is not to be interpreted according to the literal acceptation of the words it uses. In the case of *Erwin* v. *United States*, *97 U. S. 392*, it was ruled that the statute applied to cases of voluntary assignments of demands against the government and did not

embrace cases where the title was transferred by operation of law, such as the passing of claims to heirs, devisees or assignees in bankruptcy, and, upon the same reasoning, in *Goodman* v. *Niblack, supra*, it was adjudged that it did not extend to a voluntary assignment for the benefit of creditors, and in *Bailey* v. *United States, supra*, it was held that the officers of the government might safely pay according to an unrevoked power of attorney if they saw fit to do so. So a partnership agreement to carry out a governmental contract, held by one of the partners, which subjected the moneys earned from the government under the contract to the rights of other parties, was not regarded as within the policy of the act. *Hobbs* v. *McLean, 117 U. S. 567.*

It is not perceived that the assignment and consent to payment to the receiver in the present case differs in principle from an assignment to an assignee in bankruptcy, or to an assignee under a voluntary assignment for the benefit of creditors. The reason underlying the adjudications which exclude those cases from the operation of the statute is stated by Mr. Justice Miller, in *Goodman* v. *Niblack*, in this language, "that there can be no purpose in such cases to harass the government by multiplying the number of persons with whom it has to deal, nor any danger of enlisting improper influences in advocacy of the claim; that in such cases the exigencies of the party who held the claim justified and required the transfer that was made."

This reasoning is not a whit less pertinent in its application to the present receivership than in its application to either of the assignees adjudicated upon. The receiver here is actuated, in the performance of his trust, by the identical motives and desires which actuate assignees in bankruptcy and under voluntary assignments for creditors.

I am therefore of opinion that the assignment which was required from the defendant. Price, was not within the inhibition of the United States law.

In reviewing the disobedience of the defendant, I am strongly impressed that the objections now interposed are mere subterfuges urged to secure his escape from punishment for a deliberate defiance of the court's authority.

It is remembered that, when the order of August 8th, 1892, forbidding the endorsement of drafts, was first served upon the defendant, the drafts were not in his possession, and that, with the plain command of that order before him, he went to Washington and there obtained the drafts, and upon the same day, although it was only a week before the time fixed for hearing in this court, he deliberately endorsed two of the drafts. Then holding the two remaining drafts until after he had procured an adjournment of the hearing upon the order to show cause, upon terms which continued the restraint upon him, he endorsed those two remaining drafts, obtained the money upon them and departed from the state so that the court's process could not be served upon him, and practically remained without the reach of that process for fully nine months. Furthermore, after he was served with the writ of attachment and examined upon interrogatories, he refused to assign to the receiver or to consent to the receiver's having the moneys

remaining in the United States treasury. These circumstances, with other surroundings of his disobedience, convince me that his intention was not to surrender his moneys to the court's receiver, and if, in carrying out that intention, it was necessary to disobey the court's order, he would do so. Such intention carried into effect is, without question, a punishable contempt. *State* v. *Trumbull, 1 South, 157; Fraas* v. *Barlement, 10 C. E. Gr. 84: Una* v. *Dodd, 13 Stew. Eq. 672, 719.*

Filed Jan. 8, 1894

Supreme Court of the United States.

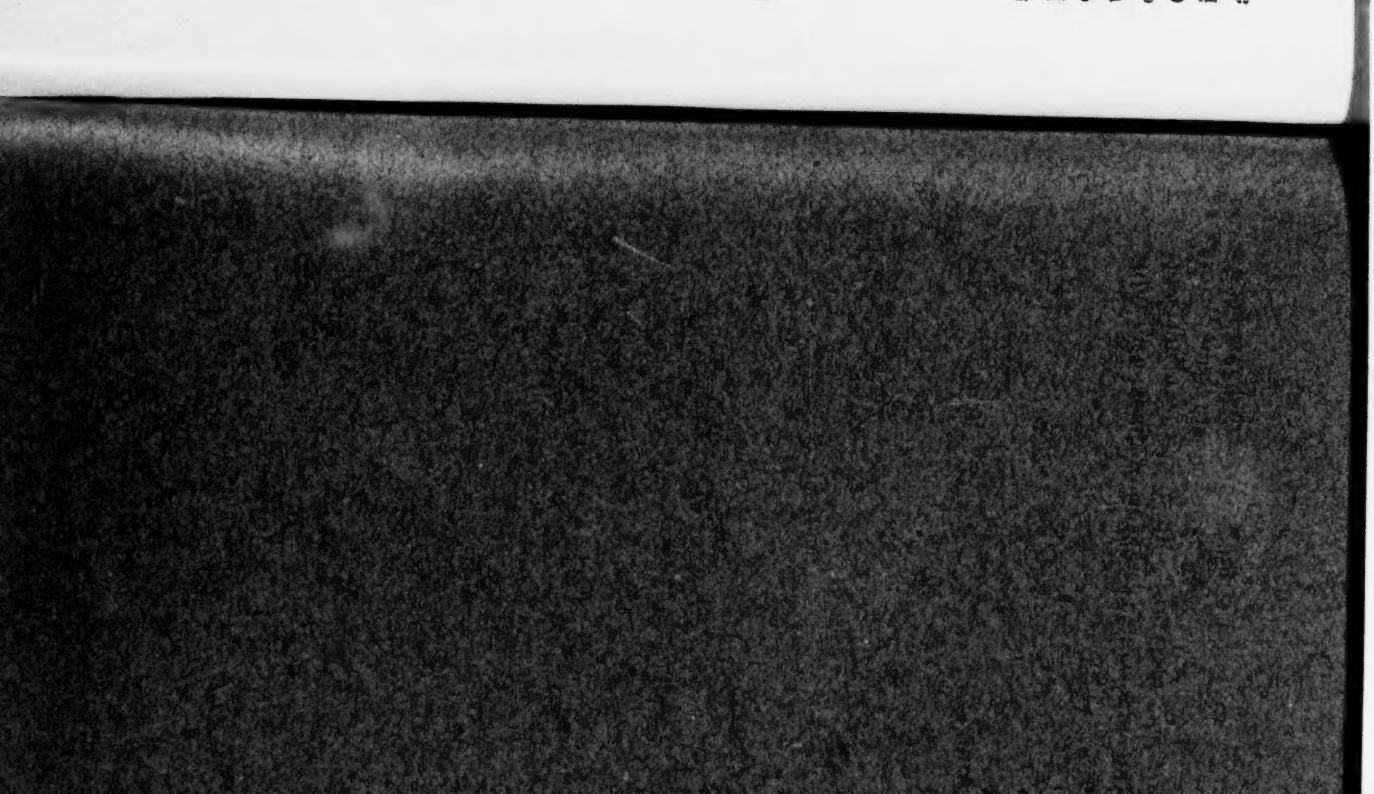
Thomas H. Tuttle et al., Plaintiffs in Error,
Alice M. Forsyth et al., Defendants in Error. } No. 164.

In Error to the Court of Errors and Appeals of the State of New Jersey.

SUPPLEMENTAL BRIEF FOR DEFENDANTS IN ERROR.

CORTLANDT PARKER,
RICHARD WAYNE PARKER,
FRANK W. HACKETT,
Of Counsel with Defendants in Error.

Thos. W. Dunlick, Printer.



Supreme Court of the United States.

RODMAN M. PRICE ET AL., Plaintiffs in Error,
v.
ANNA M. FORREST ET AL., Defendants in Error. } No. 105.

In Error to the Court of Errors and Appeals of the State of New Jersey.

SUPPLEMENTAL BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

The recent additional brief for the Plaintiffs in Error, filed by John C. Fay, renders necessary a short supplemental brief for the defendants. To restate the case, Rodman M. Price, now deceased, was purser in the Navy in 1859, and paid over to his successor $75,000 of his own money (folio 30) as an accommodation to the Government of the United States at that time, being in the early history of California (folio 31). In 1891 an act was passed (folio 38) as follows:

AN ACT FOR THE RELIEF OF RODMAN M. PRICE.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury of the United States be, and he is hereby, authorized and directed to adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting Navy agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January fourteenth, eighteen hundred and fifty, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment.

Approved February 23, 1891.

Under this act, in brief, in the lifetime of Price the accounts were adjusted, drafts drawn for them, and thereupon, on a creditor's bill, long before filed in chancery, he was enjoined from indorsing the drafts until further order.

He broke that injunction and drew certain drafts.

A receiver was appointed of all his property and things in action, and he was further ordered to convey all such assets to the receiver, and especially to indorse and deliver the remaining drafts to the receiver (folios 15 and 16).

On his failure to do so he was attached.

Thereupon, upon his death, his heirs and John C. Fay, his attorney and theirs, claim the right to draw this money free of his debts. The contrary has been decreed in the New Jersey courts, on revivor of the creditor's bill of the above-mentioned suit, and the heirs have been enjoined.

There is no error in this decree or in the injunction granted against his heirs.

ARGUMENT.

The ground is taken by Mr. Fay's brief that the act in question was by way of a bounty, because before that act R. M. Price could not have sued the United States.

That cannot possibly be true, because, if so, every special act would be by way of bounty. Of course, special acts are only passed where the person cannot sue. The distinction is not on such technical grounds, but real and essential, between acts by way of bounty, as, for instance, grants of pensions made as rewards for distinguished services, or for the support of old soldiers, and acts which are made as acts of justice, which recognize just and equitable claim, and remove some bar in its collection, as, for instance, the statute of limitations, and allowing what in equity and justice is due by the Government.

To determine this question, consider what is the consideration on which the act was passed. If that consideration be money or property, then *prima facie*, and in the absence of express provisions by the statute to the contrary, the claim is to be regarded as property and as taking the place of the original money or property for the benefit of the person or his estate, and therefore for the benefit of his creditors. This whole doctrine seems to be settled by the recent decision in Briggs v. Walker, decided October 17, 1898. (See Lawyers' Co-operative Reporter, Oct. Term, '98, No. 1, p. 55.) The court (p. 57) distinguished Emerson v. Hall, because it granted the money as a bounty for meritorious services, from the Briggs case, which was for the proceeds of cotton taken by the Government.

We take also the words of the statute. The Briggs case also distinguished the Emerson case, because the act there was "For the relief of the heirs of William

Emerson, deceased," while the act in question was entitled "For the relief of the estate of C. M. Briggs." In this case it is "For the relief of Rodman M. Price."

But the statute makes it perfectly plain that this act was not as a bounty, but as a matter of justice.

It directs—

> Adjustment by the Secretary of the Treasury upon principles of equity and justice, of the accounts of Price, as late purser and Navy agent, crediting the sum paid over and receipted for by his successor, and on such adjustment, payment of the sum found due.

This statute goes far beyond that in the English case of Stevens v. Bagwell, 15 Ves., Jr., 140, 152, in which case it was expressly decided that even a bounty is to be considered in augmentation of the estate, unless a contrary intention be shown—so held as to prize money awarded to an officer's representatives after his death.

II.

The claim that the heirs have greater rights than Price is without foundation. The United States have no reason to give them any bounty. If it was not a bounty to Price, it was not intended to be so to them. We must construe the act by its purpose. In the prize money case and in the Briggs case the word "representatives" was held to mean executors or administrators, in order to carry out the purpose of the act. This act is plainly in augmentation of the estate of Rodman M. Price, living or dead, and does not give his heirs a different right than he would have living. To hold otherwise is to frustrate that purpose, to deprive him of the power of making a last will and testament,

as well as of the power of paying his debts—debts which he owed when he originally advanced this money.

There is no difficulty in a proper construction agreeable to the rest of the act. In a bill of sale of chattels as well as in a deed, a gift to a man or his heirs will be construed as if "or" were "and," and as an absolute gift. So the Treasury Department held in this case.

Another equally sensible construction is that the word "heirs" is to be read to mean "representatives," as is constantly done in bequests, so that in case he died before the statute was passed, it should be good for the benefit of his estate.

The claim for this money so to be adjusted and paid actually *vested* when the statute was passed, although unliquidated. When the adjustment was made it was no longer unliquidated, but was for a fixed amount, on account stated.

When the drafts were drawn it was actually payable.

When a Court of Equity, acting on the conscience of Price, ordered the indorsement and delivery of the drafts, and the assignment of all his rights in action as well as the drafts to the receiver, full jurisdiction attached as to him and his successors in title, and cannot be defeated by his death.

III.

It is settled by this court that the prohibition against assignments of claims was not intended to effect general assignments of all property, whether by death, executorship, administration, bankruptcy or insolvency. It was intended to prevent special assignments, and especially what the law calls maintenance by attorneys or agents. The prohibition of the statute

might thus apply to the powers of attorney alleged in folio 15 of the record.

It is said that when the bill was originally introduced it read, "Rodman M. Price, his heirs or assigns," as set out in Fay's brief (p. 8), but without any warrant in the record. The words "or assigns" may be assumed to have been struck out to prevent the defeating of creditors by such assignment, or, at any rate, in pursuance of this general policy.

The claim vested in Rodman M. Price and became an adjusted and liquidated debt, payable to him before his death, and the Treasurer of the United States only waits by courtesy to see whom the courts of the State of New Jersey recognize as the proper representatives of Rodman M. Price for the reception of this money.

The writ of error should be dismissed.

CORTLANDT PARKER,
RICHARD WAYNE PARKER,
FRANK W. HACKETT,
Of Counsel with the Defendants in Error.

NOTE.—If the amendments to the bill in the statute are to be considered by the court as public documents, we would refer to the report on which the bill was passed, setting forth that Price had special power to raise money for the fleet on drafts drawn on the Department, and that his successor having no such power, he advanced his own money to meet the necessities of the captain commanding, and at his solicitation.

The claim might equitably be made that the power to borrow included that of making advances to the fleet itself.

PRICE *v.* FORREST.

ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

No. 165. Argued January 3, 4, 1899. — Decided March 6, 1899.

In 1850 Price, a purser in the Navy and fiscal agent for that Department, advanced $75,000 to the Government, from his private fortune, to meet emergencies. His right to receive it back was questioned, and was not settled until 1891, when Congress passed an act directing the Secretary of the Treasury to adjust his account "on principles of equity and justice," and to pay to him "or to his heirs" the sum found due him on such adjustment. It was adjusted by the Secretary, and in August, 1892, it was decided that there was due to Price from the United States $76,204.08. Meanwhile Forrest had recovered in the courts of New Jersey, of which Price was a citizen and resident, a judgment against him for $17,000. Forrest died in 1860 without having collected the amount of this judgment. In 1874 his widow, having been appointed administratrix of his

Opinion of the Court.

estate, caused the judgment to be revived by writ of *scire facias* and asked for the appointment of a receiver. Price appeared and answered, and then the cause slept until August, 1892, when Mrs. Forrest filed a petition, stating that money was about to be paid to Price by the United States on his claim, and asking for the appointment of a receiver of the Treasury draft, and that Price be ordered to endorse it to the receiver, to the end that the amount might be received by him as an officer of the court and disposed of according to law. A receiver was appointed, gave bond and entered on his duties. Price died in 1894. He left no will. No letters of administration were granted, but the New Jersey court appointed an administrator *ad prosequendum*. The bill in this case was then filed. The relief sought was, the revival of the bill of 1874, that the administrator *ad prosequendum* be made a party, and that the other parties be enjoined from receiving the money from the Treasury, and that the receiver be authorized to receive and dispose of it under the orders of the court. The heirs of Price set up their claims to it. The court held that the plaintiffs were entitled to the moneys in the Treasury and its judgment was affirmed by the highest court in the State. *Held*, that the receiver, and not the heir, was the person entitled to recover the money from the United States; and that the case did not come within the prohibitory provisions against assignments of claims against the United States, contained in Rev. Stat. § 3477.

THE case is stated in the opinion.

Mr. John C. Fay and *Mr. Flavel McGhee* for plaintiffs in error.

Mr. Cortlandt Parker and *Mr. R. Wayne Parker* for defendants in error. *Mr. Frank W. Hackett* was on their brief.

MR. JUSTICE HARLAN delivered the opinion of the court.

The ultimate question in this case is whether the plaintiffs in error, as heirs of Rodman M. Price, are entitled to receive from the United States the amount standing to the credit of the deceased on the books of the Treasury, and which represents the balance of a sum found in his lifetime under the authority of a special act of Congress to be due him upon an adjustment of his accounts as a purser in the Navy.

The facts out of which arise the questions of law discussed by counsel are as follows:

In the year 1848 the decedent was assigned to duty on the Pacific Coast in California as purser and fiscal agent of the

United States for the Department of the Navy. He acted in that capacity until about December, 1849, or January, 1850, when he was detached from such service and ordered to transfer all public money and property remaining in his hands to his successor, or to such other disbursing officer of the Navy as might be designated by the commanding officer at the naval station at California, and immediately after such transfer to report at the city of Washington for the purpose of settling his accounts.

A. M. Van Nostrand was his successor, in California, as acting purser in the Navy.

About December 31, 1849, Commodore Jones of the Navy, commanding the United States squadron at San Francisco, directed Van Nostrand to receive from Price all books, papers, office furniture and funds on hand belonging to the purser's department at that city. Thereupon Price turned over to Van Nostrand as acting purser of the Navy at San Francisco, forty-five thousand dollars, that being all the public money remaining in his hands.

Subsequently on the 14th day of January, 1850, and out of his private funds alone, Price advanced to Van Nostrand seventy-five thousand dollars, taking a receipt therefor as follows: "San Francisco, January 14, 1850. Received from Rodman M. Price, purser U. S. Navy, seventy-five thousand dollars, for which I hold myself responsible to the United States Treasury Department, $75,000. (Duplicate.) A. M. Van Nostrand, acting purser." This money was so advanced without the approval and signature of Commodore Jones.

Van Nostrand never returned the $75,000 or any part of it to Price, nor did he account for it to the Government.

Price insisted that the United States should reimburse him for the amount so advanced by him, but the officers of the Government denied its liability to him on that account. In an elaborate opinion, given March 12, 1854, Attorney General Cushing held that, while the appointment of Van Nostrand as acting purser was lawful and valid under the circumstances, the Government could not be charged with the private funds paid to him by Price, although the latter be-

lieved at the time that his advance of money to the former was an accommodation to the Government in the then unsettled condition of California. 6 Opin. Atty. Gen. 357.

Finally, by an act approved February 23, 1891, c. 279, 26 Stat. 1371, entitled "An act for the relief of Rodman M. Price," the Secretary of the Treasury of the United States was "authorized and directed to adjust upon principles of equity and justice the accounts of Rodman M. Price, late purser in the United States Navy and acting navy agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January 14, 1850, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment."

Under the authority conferred by that act the Secretary of the Treasury, in August, 1892, adjusted the accounts of Price; and in that adjustment he was credited with the sum advanced to Van Nostrand, leaving due to him from the Government the sum of $76,204.08, which of course included the above sum of $75,000.

In order that the precise questions to be determined upon this writ of error may be clearly apprehended we must now refer to certain matters occurring in the courts of New Jersey both prior to and shortly after the passage of the above act of February 23, 1891.

In the year 1857 Samuel Forrest recovered in the Supreme Court of New Jersey a judgment against Rodman M. Price for the sum of $17,000 and costs. Execution upon that judgment was returned unsatisfied. Forrest died in 1860 intestate. In 1874 his wife, one of the present defendants in error, was appointed and qualified as administratrix of his estate. In the same year she sued out a writ of *scire facias* to revive the above judgment, and it was revived. In the bill seeking a revivor of the judgment she alleged facts tending to show that Price had an interest in certain lands, and also that he had equitable things in action or other property to the amount of many thousand dollars, exclusive of all claims thereon and

of all exemptions allowed by law, which she had been unable to reach by execution on the above judgment. By that bill the administratrix also prayed discovery from Price of all property, real or personal, whether in possession or action, belonging to him, with full particulars in relation thereto, and that the same under the order of court be appropriated in satisfaction of such judgment; further, that a receiver be appointed in the cause to collect and take charge of the property, money or things in action found to belong to Price, or to which he was in any way entitled, either in law or equity, with power to convert the same into money, and with such other powers as were usually granted to receivers in similar cases; and that Price be enjoined from assigning, transferring or making any other disposition of the real estate and personal property to which he was in anywise entitled and from receiving any moneys then due or to become due to him, except where the same were held in trust or the funds held in trust proceeded from other persons than himself.

The defendants to that bill were Price and his wife and son, the latter being alleged to claim some interest in the property described in the bill. They appeared and filed an answer, Price denying that any part of the properties mentioned in the bill belonged to him, or that he had any interest in them.

After the filing of that answer the cause slept until August 9, 1892, when Mrs. Forrest, as administratrix of the estate of her husband, filed a petition stating that since the filing of her bill of complaint in that cause no payment had been made on the judgment against Price, and that neither she nor her solicitors had been able to find any personalty or real estate belonging to Price by levy upon and sale of which any part of the amount due on the judgment could be obtained; that it had lately come to her knowledge that about $45,000 was about to be paid to Price by officers of the Treasury of the United States as the sum found to be due him by an accounting then lately had between him and the Government; that that sum was to be paid by the delivery to Price or to his attorneys of a draft of the Treasurer of the United States or some other negotiable security made or issued by its financial

officers and drawn payable to his order, the rules of the Department forbidding that it be made payable to the order of any other person or that said sum should be paid in any other way, and that said draft or negotiable security was to be made and the transaction closed on the 15th day of August thereafter; and that if Price obtained said money from the United States he would, unless restrained, put the same beyond the reach of the petitioner. The prayer of the petition was that a receiver of the draft or other negotiable security be appointed, and that Price be ordered and directed immediately on the receipt of such draft or security to endorse the same to the receiver, to the end that the amount thereof might be received by him *as an officer of the court and disposed of according to law.*

On the presentation of the petition with affidavits in its support, the Chancellor on the 8th day of August, 1892, issued a rule returnable at chancery chambers September 12, following, that Price show cause why the prayer of the petition should not be granted, and an injunction issue, and a receiver appointed pursuant to that prayer, which rule further directed that Price should be and was thereby restrained and enjoined from making any indorsement of the draft referred to in the petition.

A duly certified copy of that order, pursuant to directions therein, was served upon Price on the 10th day of August, 1892. Nevertheless, after that date Price received from the Assistant Treasurer of the United States at Washington and without permission of the court collected four several drafts signed by that officer for the respective sums of $2704.08, $13,500, $20,000 and $9000, in all the sum of $45,204.08, leaving in the hands of the United States of the amount due on the settlement of Price's accounts the sum of about $31,000.

On the 10th day of October, 1892, Charles Borcherling was appointed by the Chancery Court receiver in said cause of the property and things in action belonging or due to or held in trust for Price at the time of issuing said executions, or at any time afterwards, and especially of said four drafts, with authority to possess, receive and sue for such property and

things in action and the evidence thereof; and it was made the duty of the receiver to hold such drafts *subject to the further order of the court.* The receiver was required to give bond in the sum of $40,000, conditioned for the faithful discharge of his duties. At the same time Price was ordered to convey and deliver to the receiver all such property and things in action and the evidence thereof, and especially forthwith to endorse and deliver the drafts to him, and he and all agents or attorneys appointed by him were enjoined and restrained from intermeddling with the receiver in regard to said drafts, and ordered, if in possession or control thereof, to deliver them to the receiver with an indorsement to that officer or to the clerk of the court for deposit; provided, the order should be void if the drafts other than the one for $9000 were delivered with Price's indorsement to the clerk, the proceeds to be deposited to the credit of the cause. Price was expressly enjoined from making any indorsement or appropriation of the drafts other than to the receiver or the clerk for deposit.

The receiver gave the required bond, and having entered upon the duties of his office, he caused a copy of the above order to be served upon Price, and demanded compliance with its provisions.

In 1892, the particular day not being stated, the Chancery Court issued an attachment against Price for contempt of court in disobeying the order of August 8, 1892. By an order made May 18, 1894, the court held him to be guilty of such contempt and he was directed to pay to the receiver the sum of $31,704.08 and a fine of $50 and costs, and in default of obedience to that order to be imprisoned in the county jail until it was complied with. 7 Dickinson, (52 N. J. Eq.) 16, 31. Upon appeal to the Court of Errors and Appeals the order of the Chancery Court was affirmed. 8 Dickinson, (53 N. J. Eq.) 693.

It is stated that the balance due on the settlement of Price's accounts, about $31,000, was withheld by the officers of the Government in the belief that there was a counterclaim against Price. But it having been determined to pay such balance, the Chancery Court made another order on the

18th day of May, 1894, by which Price was directed to execute two instruments in writing, which he had been previously required by the court to sign, seal and deliver, one of them consenting that the balance from the Government should be paid to the receiver, such consent to be filed with the Treasurer of the United States, and by the other assigning all his property, real and personal, and all his rights and credits.

These last two orders were served upon Price while he was sick, and he died June 8, 1894, without complying with either of them. So far as was known, he left no will, and no application had been made for the appointment of an administrator of his estate, as in case of intestacy. But letters of administration *ad prosequendum* were granted by the Prerogative Court of New Jersey to Allen L. McDermott.

The present bill was filed in the Chancery Court July 5, 1894, in the name of the administratrix of Samuel Forrest and of the receiver Borcherling. The principal defendants are the children and heirs of Rodman M. Price. The other defendants are John C. Fay and McDermott, the latter as administrator *ad prosequendum*.

That bill alleged that on the 9th day of June, 1894, the defendants executed powers of attorney to the defendant Fay, who was one of the attorneys in the litigation respecting the drafts, authorizing him to apply to the Secretary of the Treasury to pay to them the balance to the credit of Price under the act of February 23, 1891, — they claiming that such balance belongs to his *heirs*, and not to the receiver. It appears from the bill that in addition to the above four drafts, the United States paid to Price and his attorneys the further sum of $9000, reducing the balance apparently on the books of the Treasury under the above settlement to the sum of about $23,000. It was further alleged that the officers of the Treasury Department were desirous of doing right and justice in the premises; that demand had been made by the receiver upon the Treasurer of the United States for the payment to him of said balance of money, and that the Treasurer neither consented nor refused to do so, but awaited the determination

by some lawful tribunal of the right of the receiver in the premises.

The relief asked was: 1. That the cause commenced by the bill of 1874 be revived, and the administrator *ad prosequendum* be adjudged a proper party thereto. 2. That the defendants, the children and heirs of Rodman M. Price, together with Fay, be perpetually enjoined from making any demand upon or application to the United States or from receiving any part of the money awarded to the deceased then remaining in the Treasury of the United States. 3. That the parties above named be decreed to pay to the plaintiff Borcherling, receiver, to be by him disposed of *under the orders of the court*, any part of the money they might have respectively received or might receive. 4. That the administrator *ad prosequendum*, or any executor or administrator of Price thereafter admitted as defendant in the cause, deliver to the receiver all the property of the deceased, whether in possession or action, which might come to their hands.

The heirs of Price filed pleas asserting their right to the benefit of the act of February 23, 1891. The case was heard upon the bill and pleas, and the pleas were overruled by Chancellor McGill. The defendants were thereupon ordered to answer the bill.

Upon appeal to the Court of Errors and Appeals, the order of the Chancery Court was affirmed, and the cause was remitted to that court with directions to proceed therein according to law. *Price* v. *Forrest*, 9 Dickinson, (54 N. J. Eq.) 669.

The heirs then filed an answer, in which they denied that there was any jurisdiction in the Chancery Court to sequester the moneys in dispute in the Treasury of the United States, and insisted that whatever amount remained in the Treasury as the balance due on the adjustment of the accounts of Rodman M. Price belonged under the act of Congress to the defendants as his heirs.

The case was heard upon bill and answer, and the Chancery Court was of opinion that the plaintiffs were entitled to the relief asked so far as it related to the collection by the defendants of the moneys mentioned in the bill of complaint and still

in the Treasury of the United States. It was therefore "ordered and decreed, that the said defendants and each of them be and they are hereby perpetually enjoined and restrained from making any demand upon or application to the Government of the United States, or the Secretary of the Treasury of the United States or any officer of the said Treasury, or from receiving from the United States, or its said Secretary of the Treasury or any officer thereof, any part of the money remaining in the Treasury of the United States at the time of filing said bill of complaint, and which was awarded to Rodman M. Price, deceased, as in the said bill stated, or now there remaining." This judgment was affirmed by the Court of Errors and Appeals of New Jersey, 56 N. J. Eq.; and the judgment of affirmance is here for review.

1. The first proposition of the plaintiffs in error is that consistently with the statutes of the United States the defendants in error cannot take anything under the orders adjudging that Borcherling, the receiver appointed by the state court, was entitled as between him and the heirs of Price to receive the money remaining to his credit on the books of the Treasury.

This contention is based upon section 3477 of the Revised Statutes of the United States, providing that "all transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read

and fully explained the transfer, assignment or warrant of attorney to the person acknowledging the same."

It is insisted that the orders in the state court assume to transfer or assign Price's claim against the United States in violation of, or without regard to the requirements of the statute, in that no assignment of the claim has ever been freely made; that no warrant for the payment thereof had been issued when those orders were made; and that the indorsement or assignment that Price was ordered to make did not fall within any of the established exceptions under section 3477, such as assignments in bankruptcy and insolvency, and assignments by operation of law.

Are these propositions supported by the decisions of this court in which it has been found necessary to construe that section?

In *United States* v. *Gillis*, 95 U. S. 407, 416, the question was as to the validity of a voluntary transfer of the legal title to a claim under the Abandoned and Captured Property Act of March 12, 1863, for the proceeds of certain cotton seized by the military forces of the United States. The suit was brought by the transferee in the Court of Claims which found in his favor. By this court it was adjudged that he could not maintain the action. While holding that the act of February 26, 1853, c. 81, 10 Stat. 170, from which section 3477 was taken, was of universal application and covered all claims against the United States in every tribunal in which they might be asserted, this court stated that "there are devolutions of title by force of law, without any act of parties, or involuntary assignments compelled by law," to which the statute did not apply.

In *Erwin* v. *United States*, 97 U. S. 392, 397, which was also an action to recover the proceeds of certain cotton captured by the military forces of the United States, it appeared that the original claimant became a bankrupt, and assigned his property to an assignee in bankruptcy. One of the questions was whether the claim for these proceeds, even if it constituted a demand against the Government, was capable of assignment under the above statute. This court said:

"The act of Congress of February 26, 1853, to prevent frauds upon the Treasury of the United States, which was the subject of consideration in the *Gillis case*, applies only to cases of voluntary assignment of demands against the Government. It does not embrace cases where there has been a transfer of title by operation of law. The passing of claims to heirs, devisees or assignees in bankruptcy are not within the evil at which the statute aimed; nor does the construction given by this court deny to such parties a standing in the Court of Claims."

In *Goodman* v. *Niblack*, 102 U. S. 556, 560, where the question was whether the above statute embraced voluntary assignments for the benefit of creditors, this court, referring to *Erwin* v. *United States*, said: "The language of the statute, 'all transfers and assignments of any claim upon the United States, or of any part thereof, or any interest therein,' is broad enough (if such were the purpose of Congress) to include transfers by operation of law, or by will. Yet we held it did not include a transfer by operation of law, or in bankruptcy, and we said it did not include one by will. The obvious reason of this is that there can be no purpose in such cases to harass the Government by multiplying the number of persons with whom it has to deal, nor any danger of enlisting improper influences in advocacy of the claim, and that the exigencies of the party who held it justified and required the transfer that was made. In what respect does the voluntary assignment for the benefit of his creditors, which is made by an insolvent debtor of all his effects, which must, if it be honest, include a claim against the Government, differ from the assignment which is made in bankruptcy? There can here be no intent to bring improper means to bear in establishing the claim, and it is not perceived how the Government can be embarrassed by such an assignment. The claim is not specifically mentioned, and is obviously included only for the just and proper purpose of appropriating the whole of his effects to the payment of all his debts. We cannot believe that such a meritorious act as this comes within the evil which Congress sought to suppress by the act of 1853."

The doctrine of these cases has not been modified by any subsequent decision. Nor, as the argument at the bar implied, is that doctrine inconsistent with the decision subsequently rendered in *St. Paul & Duluth Railroad* v. *United States*, 112 U. S. 733. Nothing more was adjudged in that case than that a voluntary transfer by way of mortgage of a claim against the United States for the security of a debt, and finally completed and made absolute by a judicial sale, was within the purview of the prohibition contained in section 3477, and could not be made the basis of an action against the Government in the Court of Claims. Such a voluntary assignment to secure a specific debt was held to be within the mischiefs which that section was intended to remedy. To the same class belongs *Ball* v. *Halsell*, 161 U. S. 72, 79, which was the case of a voluntary transfer of part of a claim against the United States on account of the depredations of certain Indians on the property of the claimant.

While the present case differs from any former case in its facts, we think that the principle announced in *Erwin* v. *United States* and *Goodman* v. *Niblack* justified the conclusion reached by the state court. That court held that it had jurisdiction under the laws of the State, and as between the parties before it, to put into the hands of its receiver any chose in action of whatever nature belonging to Price and of which he had possession or control. The receiver did not obtain from Price in his lifetime an assignment of his claim against the United States. But having full jurisdiction over him, the court adjudged that as between Price and the plaintiffs who sued him the claim should not be disposed of by him to the injury of his creditors, but should be placed in the hands of its receiver subject to such disposition as the court might determine as between the parties before it and as was consistent with law. The suit in which the receiver was appointed was of course primarily for the purpose of securing the payment of the judgment obtained by Samuel Forrest in his lifetime against Rodman M. Price. But that fact does not distinguish the case in principle from *Goodman* v. *Niblack*; for the transfer in question to the receiver was the act

of the law, and whatever remained, whether of property or money, in his hands after satisfying the judgment and the taxes, costs or expenses of the receivership as might be ordered by the court, would be held by him as trustee for those entitled thereto, and his duty would be to pay such balance into court to the credit of the cause "to be there disposed of according to law." Revision of N. J. Laws, 1877, sec. 26, p. 394.

As this court has said, the object of Congress by section 3477 was to protect the Government, and not the claimant, and to prevent frauds upon the Treasury. *Bailey* v. *United States*, 109 U. S. 432; *Hobbs* v. *McLean*, 117 U. S. 567; *Freedman's Savings Co.* v. *Shepherd*, 127 U. S. 494, 506. There was no purpose to aid those who had claims for money against the United States in disregarding the just demands of their creditors. We perceive nothing in the words or object of the statute that prevents any court of competent jurisdiction as to subject-matter and parties from making such orders as may be necessary or appropriate to prevent one who has a claim for money against the Government from withdrawing the proceeds of such claim from the reach of his creditors; provided such orders do not interfere with the examination and allowance or rejection of such claim by the proper officers of the Government, nor in anywise obstruct any action that such officers may legally take under the statutes relating to the allowance or payment of claims against the United States. If a court, in an action against such claimant by one of his creditors, should, for the protection of the creditor, forbid the claimant from collecting his demand except through a receiver who should hold the proceeds subject to be disposed of according to law under the order of court, we are unable to say that such action would be inconsistent with section 3477. It may be that the officers charged with the duty of allowing or disallowing claims against the Government are not required to recognize a receiver of a claim appointed by a court, and may, if the claim be allowed, refuse to make payment except as provided in section 3477. Upon this subject, the Second Comptroller of the Treasury, in his opinion, rendered July

11, 1894, construing the act of February 23, 1891, and in which he held that Price was entitled to receive in his lifetime, whatever sum was found to be due him on the adjustment of his accounts, but if he died before such adjustment was made his heirs would take, not by virtue of the act of Congress, but according to the laws of descent at the domicil of the deceased, said: "I do not presume for a moment that the Chancery Court of New Jersey could issue an execution and compel payment of this money, nor could any of its powers be brought to bear to compel, without at least additional legislation by Congress, the Comptroller to pay its judgment; but while that is true, yet on the other hand the Comptroller, so far having awaited the adjudication of that Chancery Court, ought to abide by the result of that litigation, and await a final adjudication and certification of the amount, as to who are entitled under the laws of that State. This comes more from comity, and from a disposition on the part of the Treasury officers to obey the laws of the land, and to help to enforce the decrees of the courts that have jurisdiction over matters in litigation of this kind, than from any actual authority that a court may have over the Comptroller to compel him to make payment. In conclusion, then, the Comptroller will not at this time act in this matter but will say to the gentlemen, that they must fight it out in the courts of New Jersey, and that this court will follow the final decision that may be rendered there. . . . Hence this matter will be suspended until such time as the Comptroller may be put into possession of the final decree, either of the New Jersey Chancery Court, or such court as may have appellate jurisdiction therefrom." Even if it be true that the final order of the state court in relation to the money in question would not impose any legal duty upon the officers of the Treasury, it does not follow that the order of court appointing the receiver would be null and void, as between those who are parties to the cause and who are before the court.

It only remains to say touching this part of the case that if section 3477 does not embrace the passing or transfer of claims to heirs, devisees or assignees in bankruptcy, as held

in *Erwin* v. *United States*, nor a voluntary assignment by a debtor of his effects for the benefit of his creditors, as held in *Goodman* v. *Niblack*, it is difficult to see how an order of a judicial tribunal having jurisdiction of the parties appointing a receiver of a claim against the Government and ordering the claimant to assign the same to such receiver to be held subject to the order of court for the benefit of those entitled thereto, can be regarded as prohibited by that section.

2. Were the *heirs* of Rodman M. Price entitled upon his death, by virtue of the act of February 23, 1891, to such balance as then remained to his credit in the Treasury of the United States on the adjustment made of his accounts under that act? If they were so entitled, then the final judgment of the Court of Errors and Appeals affirming the judgment of the Chancery Court denied to the plaintiffs in error a right specially set up and claimed by them under the above act; and therefore the jurisdiction of this court to reëxamine that final judgment cannot be doubted. Rev. Stat. § 709.

The plaintiffs in error insist that *Emerson* v. *Hall*, 13 Pet. 409, 413, 414, is decisive in their favor. Although this contention is not without some force, we are of opinion that the judgment in that case does not control the determination of the present case. Emerson, surveyor, Chew, collector, and Lorrain, naval officer, at the port of New Orleans, having seized a brig for a violation of the laws prohibiting the importation of slaves, instituted proceedings that resulted in the condemnation of such vessel and slaves. It had been previously decided in *The Josefa Segunda*, 10 Wheat. 312, that the proceeds could not be paid to the custom-house officers, but vested in the United States. Emerson and Lorrain having died, Congress, on the 3d day of March, 1831, passed an act entitled "An act for the relief of Beverly Chew, the *heirs* of William Emerson, deceased, and the *heirs* of Edward Lorrain, deceased." That act directed the proceeds in court to be paid over to the said Beverly Chew and "the legal representatives" of Emerson and Lorrain, respectively. The question was whether the Emerson part of the proceeds belonged to his heirs, or were assets primarily liable for his

debts. This court, after observing that Emerson had not acted under any law, nor by virtue of any authority, and that his acts imposed no obligation, legal or equitable, on the Government to compensate him for his services, said: "Had Emerson become insolvent and made an assignment, would this claim, if it may be called a claim, have passed to his assignees? We think, clearly, it would not. Under such an assignment, what could have passed? The claim is a nonentity. Neither in law nor in equity has it any existence. A benefit was voluntarily conferred on the Government; but this was not done at the request of any officer of the Government, or under the sanction of any law or authority, express or implied. And under such circumstances, can a claim be raised against the Government, which shall pass by a legal assignment, or go into the hands of an administrator as assets? . . . A claim having no foundation in law, but depending entirely on the generosity of the Government, constitutes no basis for the action of any legal principle. It cannot be assigned. It does not go to the administrator as assets. It does not descend to the heir. And if the Government, from motives of public policy, or any other considerations, shall think proper, under such circumstances, to make a grant of money to the heirs of the claimant, they receive it as a gift or pure donation — a donation made it is true in reference to some meritorious act of their ancestor, but which did not constitute a matter of right against the Government. In the present case, the Government might have directed the money to be paid to the creditors of Emerson, or to any part of his heirs. Being the donor it could, in the exercise of its discretion, make such distribution or application of its bounty as circumstances might require. And it has, under the title of an act, 'for the relief of the heirs of Emerson,' directed, in the body of the act, the money to be paid to his legal representatives. That the heirs were intended by this designation is clear; and we think the payment which has been made to them under this act has been rightfully made, and that the fund cannot be considered as assets in their hands for the payment of debts."

Now, it is said that the grounds upon which in *Emerson* v. *Hall* the claim of the heirs was sustained, exist in the present case; that Price did not act under any law, nor in virtue of any authority, and that his acts imposed no obligation in law or equity upon the Government that could have been enforced even if suit could have been maintained against it. And the conclusion sought to be drawn is that Congress must have intended by the act of 1891, as it was held to have intended by the act in *Emerson's case*, to legislate for the benefit of the heirs or next of kin of the decedent and not for his personal representatives. But there were other facts in the *Emerson case* which placed that case upon peculiar grounds. Emerson and Lorrain were both dead when the act of March 3, 1831, was passed, and therefore Congress must have had in mind the question whether the Emerson and Lorrain portions of the money on deposit in court should be given to their respective heirs or not. And the question was solved as indicated by the preamble to that act. The preamble distinctly shows that Congress had in view the *heirs*, and not those who would administer the estate of the two persons whose meritorious services were recognized. Although a preamble has been said to be a key to open the understanding of a statute, we must not be understood as adjudging that a statute, clear and unambiguous in its enacting parts, may be so controlled by its preamble as to justify a construction plainly inconsistent with the words used in the body of the statute. We mean only to hold that the preamble may be referred to in order to assist in ascertaining the intent and meaning of a statute fairly susceptible of different constructions. *United States* v. *Fisher*, 2 Cranch, 358, 386; *United States* v. *Palmer*, 3 Wheat. 610, 631; *Beard* v. *Rowan*, 9 Pet. 301, 317; *Holy Trinity Church* v. *United States*, 143 U. S. 457, 462; *Coosaw Mining Co.* v. *South Carolina*, 144 U. S. 550. In *Emerson's case* the decision was placed partly on the ground that the title of the act of 1831 indicated that Congress, in using the words "legal representatives" in the body of the act, had in mind the heirs of Emerson and Lorrain, and not technically their personal representatives. It is a fact not without significance

that the money awarded by the above act of 1831 did not replace any moneys taken by Emerson and Lorrain from their respective estates for the benefit of the Government. They had only rendered meritorious personal services for the public upon which no claim of creditors could be based, but which services Congress chose to recognize by making a gift to the heirs. This was substantially the view taken of the case of *Emerson* v. *Hall* in the recent case of *Blagge* v. *Balch*, 162 U. S. 439, 458.

The case before us differs from the *Emerson case* by reason of circumstances which we must suppose were not overlooked by Congress when it passed the act of 1891. By advancing to Van Nostrand seventy-five thousand dollars to be used for the Government, Price's ability to meet his obligations to creditors was to that extent diminished. As he had acted in good faith, and in the belief that he was promoting the best interests of the Government, the purpose of Congress was to make him whole in respect of the amount he had in good faith advanced to his successor for public use. He was then alive, and there was no occasion for Congress to think of making any provision for those who might be his heirs. We think that the legislation in question had reference to his financial condition, and there is no reason to suppose that Congress intended that the amount if any found due him upon the adjustment of his accounts should not constitute a part of his absolute personal estate, to be received and applied in the event of his death by his personal representative as required by law.

We concur with the state court in the view that the act of 1891 was not intended to confer a mere gratuity upon Price, but was a recognition of a moral and equitable, if not legal, obligation upon the part of the Government to restore to him moneys advanced in the belief at the time that they would be repaid to him in the settlement of his accounts as a disbursing officer; and that the use of the words "or his heirs" in the act was not to make a gift to the heirs of such sum as upon the required adjustment of his accounts was found to be due their ancestor, and thereby exclude his creditors from

all interest in that sum, but to provide against the contingency of death occurring before the adjustment was consummated, and thus to make it certain that the right to have his accounts credited with the amount paid to Van Nostrand, upon principles of "equity and justice," should not be lost by reason of such death. Under this interpretation of the act, the words "or his heirs" must be held to mean the same thing as personal representatives. We do not perceive either in the words of the act, or in the circumstances attending its passage, anything to justify the belief that Congress had any purpose in the event of the death of Price to defeat the just demands of creditors.

Reference was made in argument to the recent case of *Briggs* v. *Walker*, 171 U. S. 466, 473, 474. It differs in some respects from both the *Emerson case* and the present case, but the decision is in accord with the views herein expressed. It arose under "an act for the relief of the estate of C. M. Briggs, deceased," and the principal question was whether the right given by the act to Briggs' "legal representatives" was for the benefit of his next of kin to the exclusion of his creditors. This court said: "The act of Congress nowhere mentions heirs at law, or next of kin. Its manifest purpose is not to confer a bounty or gratuity upon any one; but to provide for the ascertainment and payment of a debt due from the United States to a loyal citizen for property of his, taken by the United States; and to enable his executor to recover, as part of his estate, proceeds received by the United States from the sale of that property. The act is 'for the relief of the estate' of Charles M. Briggs, and the only matter referred to the Court of Claims is the claim of his 'legal representatives.' The executor was the proper person to represent the estate of Briggs, and was his legal representative; and as such he brought suit in the Court of Claims, and recovered the fund now in question, and consequently held it as assets of the estate, and subject to the debts and liabilities of his testator to the defendants in error." It is to be observed that the court in that case looked both to the body of the act and the preamble in order to ascertain the intention of Congress.

Syllabus.

It results that the plaintiffs in error, as heirs of Rodman M. Price, were not denied by the final judgment of the state court any right secured to them by the act of 1891.

Something was said in argument which implied that Price had wrongly resisted the collection of the Forrest claim and judgment. It is proper to say that so far as the record speaks on that subject, the course of the deceased was induced by the belief on his part that it was a claim which he was not bound in law or justice to pay. Our conclusion does not rest in any degree upon the character of that claim, but entirely upon questions of law arising out of matters that were concluded, so far as this court is concerned, by the action of the state court, and which we have no jurisdiction to review.

We find in the record no error of law in respect of the Federal questions presented for consideration, and therefore the decree below must be

Affirmed.